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OFFICE OF GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY

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LEGISLATIVE HISTORY
of the
CENTRAL INTELLIGENCE AGENCY
NATIONAL SECURITY ACT OF 1947

Prepared by
OFFICE OF LEGISLATIVE COUNSEL

25 July 1967

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INTRODUCTION

This legislative history of the Central Intelligence Agency has been compiled in the interest of providing a better understanding of the structure and functions of the Central Intelligence Agency.¹

As a function of Government, foreign intelligence lies within the province of both the Legislative and Executive Branches. Not only does Congress possess the power of the purse but it has the power and responsibility to provide "...for the common Defense and general Welfare of the United States..."² Roots of relationship are even found in the power to declare war since "...the surest means of avoiding war is to be prepared for it in peace..."³

Equally clear is the responsibility of the Chief Executive to take executive action, not barred by the Constitution or other valid law of the land, which he deems necessary for the protection of the nation's security.

As a matter of fact, the Central Intelligence Agency is a product of both Executive and Legislative action. This partnership of action is seen in the major evolutionary stages that occurred during the period 1941 through 1949:

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Executive Action

11 June 1941

Forerunner of national intelligence service established by Presidential Order (6 Fed. Reg. 3422). (Key Elements: Office of Coordinator of Information; Government-wide collection of information bearing on national security; direct reporting to the President; inter-departmental committee system.)

23 July 1941

Coordinator of Information authorized to expend funds for certain limited purposes by Presidential letter.

13 June 1942

Office of Coordinator of Information redesignated as Office of Strategic Services and its functions (exclusive of certain foreign information activities transferred to Office of War Information) transferred to Office of Strategic Services (16 Fed. Reg. 3422). (Key Elements: Joint Chiefs of Staff jurisdiction; Director of Strategic Services appointed by the President.)

1 September 1942

Certain contracting latitude "...without regard to provisions of law..." granted to Director, Office of Strategic Services (Executive Order 9241).

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22 January 1946

First Government-wide foreign intelligence service established by Presidential directive. (Key Elements: National Intelligence Authority at Secretary-of-Department level; participation by personal representative of the President; the office of the Director of Central Intelligence (appointed by the President) Central Intelligence Group; within limits of appropriations available to Secretaries of State, War, Navy; precursor of Central Intelligence responsibilities and authorities later enacted into law.)

Legislative Action

28 June 1944

First independent appropriations for Office of Strategic Services (National War Agency Appropriations Act of 1945). (Key Elements: Appropriations in Title I covering the Executive office of the President; expenditures "for objects of a confidential nature;" certain accounting by certificate of Director of Strategic Services.)

26 July 1947

Statutory basis for centralized foreign intelligence service prescribed by the National Security Act of 1947. (Key Elements: National Security Council, Office of the Director of Central Intelligence; the Central Intelligence Agency; foreign intelligence service on a Government-wide basis.)

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20 June 1949

Statutory basis for the administration of the CIA prescribed by the Central Intelligence Agency Act of 1949. (Key Elements: Enabling authorities for the administration of the CIA on an independent basis.)

Executive correspondence and orders and Congressional material, including hearings and reports and Congressional Record reporting of floor discussions on bills specifically relating to CIA are the primary sources of material used for this paper. Secondary source material and other comment are used for continuity and completeness.

In connection with past and on-going efforts to commit the Agency's history to writing, this paper provides a chronology and bibliography of legislative actions affecting the Agency, and collects the issues concerning central intelligence which were put before Congress for resolution; the alternatives considered by Congress in resolving them; and the reasons or rationale for the choices or compromises Congress ultimately approved.

It is recommended that the existing CIA publication on statutes specifically relating to CIA (in text and explanation form) be reviewed in connection with this work.

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CHAPTER I. EXECUTIVE DEVELOPMENT

Interest in the structure of the nation's foreign intelligence effort was of primary interest to the Executive Branch during the 1941 to 1946 period. In response to the pre-war, war, and post-war events spanning this period, the Roosevelt and Truman Administrations saw the establishment of the Coordinator of Information, the Strategic Services, and finally the Central Intelligence Group. Each served as a building block for its successor organization.

Initiative

The deteriorating international situation in the late 1930's surfaced a number of problems outside of the responsibilities of any one department. Yet, it was becoming increasingly urgent that the President receive coordinated information.

The Reorganization Act of 1939 provided a basis for handling both of these problems.⁴ Under it, the Executive Office of the President was established.⁵

The Executive Office, as a central staff, was organized into six principal divisions. One was reserved for emergency management "...in the event of a national emergency or threat of a national emergency."⁶ This was in September of 1939. Eight months later and under a "threatened national emergency," the Office of Emergency Management (OEM) was established.

OEM was concerned with clearing information and securing maximum "utilization and coordination of agencies and facilities..."⁷

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In keeping with its duties to "...advise and assist the President in the discharge of extraordinary responsibilities imposed upon him by an emergency arising out of war, the threat of war, (or) imminence of war..."⁸ the functions of OEM were further refined in January of 1941. Clearly, the events which foretold the advent of the Second World War were also propelling the organization of foreign intelligence on a Government-wide basis.

Coordinator of Information

The responsibilities of a Government-wide informational channel to the President became more explicit on 11 July 1941 when the Office of Coordinator of Information (COI) was added to the Executive Office. Colonel William J. Donovan was named to the position. The functions prescribed for the COI and those eventually enacted as duties of the Central Intelligence Agency were quite similar:

"Collect and analyze all information and data, which may bear upon national security; to correlate such information and data, and to make such information and data available to the President and to such departments and agencies as the President may determine and to carry out, when requested by the President, such supplementary activities as may facilitate the securing of information important for national security not now available to the Government."⁹

Authority to fulfill this commission included the right of access to information and data within various departments and agencies as long as the duties and responsibilities of the President's regular military and naval advisers were not impaired.¹⁰ The COI was also empowered to obtain assistance through the appointment of various

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departmental committees. While no compensation attached to the office, transportation, subsistence, and other incidental expenses were authorized.¹¹ Operating expenses were funded out of the President's Emergency Fund. Under this simple but broad mandate, Colonel Donovan began building a foreign intelligence service.

Office of Strategic Services

Following the Declarations of War against the AXIS powers, Congress enacted the First War Powers Act, 1941, (P. L. 77-354) and conferred upon the President the authority "... urgently needed in order to put the Government of the United States on an immediate war footing."¹² Title I of the Act authorized redistribution of the functions of the various agencies to facilitate the prosecution of the war effort.

With the nation on a "war footing," it was clearly desirable to provide a closer link between the tested and developing capabilities of COI and the Armed Forces. On 13 June 1942 the President, as Commander in Chief, issued a military order re-designating the COI as the Office of Strategic Services (OSS) under the jurisdiction of the Joint Chiefs.¹³ (Foreign information activities of COI were transferred to the newly created Office of War Information.¹⁴) The charge for OSS was to:

- "a. Collect and analyze such strategic information as may be required by the United States Joint Chiefs of Staff."
- "b. Plan and operate such special services as may be directed by the United States Joint Chiefs of Staff."

The President appointed Colonel Donovan as Director of Strategic

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Services "...under the direction and supervision of the United States Joint Chiefs of Staff."

OSS Authorities

(OSS was forced to adjust to a number of problems which had not faced COI. COI had received secure support in the form of funding, contracting and other services from the Executive Office. This arrangement could not be continued indefinitely. Consequently, OSS needed and was granted certain specific authority.

The President extended to OSS the same privilege to enter into contracts "...without regard to the provisions of law relating to the marking, performance, amendment, or modification of contracts..." as had been earlier granted to the War Department, the Navy Department, and the United States Maritime Commission under the First War Powers Act of 1941.¹⁵

(During the first Fiscal year of operation (1942-43), OSS was supported out of allocations from the President's Emergency Fund. Significantly, and to the extent determined by the President, these Funds could be expended "...without regard to the provisions of law regarding the expenditure of Government funds or the employment of persons in the Government service..." In addition, the President could authorize certain expenditures "...for objects of a confidential nature and in any such case the certificate of the expending agency as to the amount of the expenditure and that it is determined² inadvisable to specify the nature

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thereof shall be deemed a sufficient voucher for the sum therein expressed to have been expended. "16

OSS became independent of the President's Emergency Fund during the second fiscal year of its operation (1943-44). The National War Agencies Appropriation Act of 1944,¹⁷ as it pertained to OSS, read as follows:

OFFICE OF STRATEGIC SERVICES

Salaries and expenses: For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities, including salaries of a Director at \$10,000 per annum, one assistant director and one deputy director at \$9,000 per annum each; utilization of voluntary and uncompensated services; procurement of necessary services, supplies and equipment without regard to section 3709, Revised Statutes; travel expenses, including (1) expenses of attendance at meetings of organizations concerned with the work of the Office of Strategic Services, (2) actual transportation and other necessary expenses and not to exceed \$10 per diem in lieu of subsistence of persons serving while away from their homes without other compensation from the United States in an advisory capacity, and (3) expenses outside the United States without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926, as amended (5 U.S.C. 821-833), and section 901 of the Act of June 29, 1936 (46 U.S.C. 1241); preparation and transportation of the remains of officers and employees who die abroad or in transit, while in the dispatch of their official duties, to their former homes in this country or to a place not more distant for interment, and for the ordinary expenses of such interment; purchase and exchange of lawbooks and books of reference; rental of news-reporting services; purchase or rental and operation of photographic, reproduction, duplicating and printing machines, equipment, and devices and radio-receiving and radio-sending equipment and devices; maintenance, operation, repair, and hire of motor-propelled or horse-drawn passenger-carrying vehicles and vessels of all kinds; printing and binding; payment of living and quarters allowances to employees with official headquarters located abroad in accordance with regulations approved by the President

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on December 30, 1942; exchange of funds without regard to section 3651. Revised Statutes (31 U.S.C. 543); purchase and free distribution of firearms, guard uniforms, special clothing, and other personal equipment; the use of and payment for compartments or other superior accommodations considered necessary by the Director of Strategic Services or his designated representatives for security reasons or the protection of highly technical and valuable equipment; \$35, 000, 000 of which amount such sums as may be authorized by the Director of the Bureau of the Budget may be transferred to other departments or agencies of the Government, either as advance payment or reimbursement of appropriation, for the performance of any of the functions or activities for which this appropriation is made: Provided, That \$23, 000, 000 of this appropriation may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds or the employment of persons in the Government service, and \$21, 000, 000 of such \$23, 000, 000 may be expended for objects of a confidential nature, such expenditures to be accounted for solely on the certificate of the Director of the Office of Strategic Services and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

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From its inception, OSS operated under two unusual rules relating to the expenditure of Government monies. One permitted latitude concerning the purpose for which funds could be expended. The other protected against the unauthorized disclosure of the purpose and details of certain expenditures. The Director of OSS enjoyed the confidence of Congress in the exercise of this broad grant of authority and this confidence in him was sustained in subsequent appropriation acts.¹⁸

Central Intelligence Group

While the Office of the Coordinator of Information and the Office of Strategic Services were forerunners of a Government-wide foreign intelligence service, the Presidential Directive of 22 January 1946 was the capstone of Executive action. It established the National Intelligence Authority, the Central Intelligence Group, and the position of the Director of Central Intelligence.

Nearly two years of study and discussion preceded the issuance of the Directive. While a number of different approaches were advocated, the need for a fully coordinated intelligence system was never questioned.

The influence of the Presidential Directive of 22 January 1946 on what was eventually enacted in the foreign intelligence section of the National Security Act of 1947 cannot be overemphasized.

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Background "Principles"

In October of 1944 Donovan, by now a General, presented President Roosevelt with a document entitled "The Basis for a Permanent United States Foreign Intelligence Service." The need, as seen by General Donovan, was an organization "which will procure intelligence both by overt and covert methods and will at the same time provide intelligence guidance, determine national intelligence objectives, and correlate the intelligence material collected by all Government agencies."¹⁹ General Donovan formulated ten governing principles in this presentation:

"That there should be a central, overall Foreign Intelligence Service which (except for specialized intelligence pertinent to the operations of the armed services and certain other Government agencies) could serve objectively and impartially the needs of the diplomatic, military, economic, and propaganda service of the Government.

"That such a Service should not operate clandestine intelligence within the United States.

"That it should have no policy function and should not be identified with any law-enforcing agency either at home or abroad.

"That the operations of such a Service should be primarily the collection, analysis, and dissemination of intelligence on the policy or strategy level.

"That such a Service should be under a highly qualified Director, appointed by the President, and be administered under Presidential direction.

"That, subject to the approval of the President, the policy of such a Service should be determined by the

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Director, with the advice and assistance of a board on which the Department of State and the Armed Services should be represented.

"That such a Service, charged with collecting intelligence affecting national interests and defense, should have its own means of communication and should be responsible for all secret activities, such as:

- (a) Secret intelligence
- (b) Counter-espionage
- (c) Crypto-analysis
- (d) Clandestine subversive operations

"That such a Service be operated on both vouchered and unvouchered funds.

"That such a Service have a staff of specialists, professionally trained in analysis of intelligence and possessing a high degree of linguistic, regional, or functional competence to evaluate incoming intelligence, to make special reports, and to provide guidance for the collecting branches of the Agency.

"It is not necessary to create a new agency. The nucleus of such an organization already exists in the Office of Strategic Services."

The document was returned to General Donovan on 31 October 1944 with a comment that an adviser had informed the President that a better and cheaper intelligence system was possible. However, there was also an accompanying request that General Donovan continue his work on a post-war intelligence organization.

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"Plan"

In keeping with the President's request, General Donovan submitted a more detailed plan to the President. In transmittal, Donovan recommended that "...intelligence control be returned to

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the supervision of the President (with a) central authority reporting directly to you (the President), with responsibility to frame intelligence objectives and to collect and coordinate the intelligence material required by the Executive Branch in planning and carrying out national policy and strategy."²⁰

The plan took the form of a draft directive and incorporated the principles General Donovan had earlier prescribed and several additional functions and duties including: "Coordination of the functions of all intelligence agencies of the Government...; collection, either directly or through existing Government departments and agencies, of pertinent information...; procurement, training, and supervision of its intelligence personnel; subversive operations abroad, and determination of policies for and coordination of facilities essential to the collection of information."²¹

Certain administrative authorities were also included in the Donovan Plan, "to employ necessary personnel and make provision for necessary supplies, facilities, and services" (and) to provide for the (Agency's) internal organization and management...in such manner as its Director may determine."²²

Joint Chiefs' Consideration

The Donovan plan of 18 November 1944 was distributed to various Cabinet officials and the Joint Chiefs. On 24 January 1945, the Donovan plan and an alternate proposal by the Joint Intelligence

Committee were covered in a report of the Joint Strategic Survey Committee to the Joint Chiefs.²³

Approximately a month after the war had ended, the recommendations in that report were incorporated into a Joint Chiefs of Staff report.²⁴

The Joint Chiefs disagreed with Donovan's concept that the centralized service should exist under the direct supervision of the President. They felt that this would "over-centralize the National Intelligence Service and place it at such a level that it would control the operation of departmental intelligence agencies without responsibility, either individually or collectively to the heads of departments concerned."²⁵

The structure recommended by the Joint Chiefs included a National Intelligence Authority (NIA) composed of the Secretaries of State, War, and Navy and a representative of the Joint Chiefs of Staff. The Authority was to be responsible for overall intelligence planning and development as well as the inspection and coordination of all Federal intelligence activities. It was to assure the most effective accomplishment of the intelligence mission as it relates to national security. A Central Intelligence Agency with a Director appointed by the President was to be responsible to the NIA and assist in its mission. An Intelligence Advisory Board made up of the heads of the principal military and civilian agencies having functions related to the national security was to advise the Director of Central Intelligence.

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With one exception, an independent budget for the National

Intelligence Authority, the substance of the Joint Chiefs' report was to be eventually recommended to the President by the Secretaries of State, War, and Navy.

Secretaries of State, War, and Navy Consideration

To General Donovan the task of central intelligence was to assure that "...the formulation of national policy both in its political and military aspects is influenced and determined by knowledge (or ignorance) of the aims, capabilities, intentions, and policies of other nations."²⁶ Consideration by the customers, the Secretaries of State, War, and Navy, was needed before further progress could be made.

Secretary of Navy

Following the release of the Joint Chiefs' report, Secretary of the Navy, James Forrestal, in a memorandum to the Secretary of War, dated 13 October 1945, commented upon subjects of mutual interest including: "Joint Intelligence. The Joint Chiefs of Staff, as you know, made a recommendation to the President for a national intelligence organization, the general outline of which provides for intelligence supervision by the War, State, and Navy Departments, with a director charged with the working responsibility functioning under these individuals as a group. I think this is a subject which should have our close

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attention. The Joint Chiefs of Staff paper seems to me soundly conceived and, if you agree, I think we should push it vigorously at the White House."

Secretary of War

Assistant Secretary Robert Lovett was placed in charge of a committee in the War Department to study the matter. After considering the opinions of a number of people experienced in wartime intelligence,²⁷ the Lovett Committee submitted a report²⁸ to the Secretary of War for a centralized national intelligence organization similar to that which had been recommended by the Joint Chiefs six weeks previously.

Secretary of State

As a parallel development and in keeping with his preeminence in the field of foreign affairs, the Secretary of State was directed by the President to "take the lead in developing the comprehensive and coordinated foreign intelligence program for all Federal agencies concerned with that type of activity...through the creation of an inter-departmental group, which would formulate plans for (the President's) approval."²⁹ The Secretary of State submitted his plan to the Secretaries of War and Navy on 10 December 1945.³⁰

The State plan provided for a National Intelligence Authority consisting of the Secretary of State (Chairman) and the Secretaries of

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War and Navy. Heads of other departments and agencies would be subject to call to participate in matters of special interest to them.

While the State plan did not preclude "centralized intelligence operations" its primary emphasis was on interdepartmental committees and organization. It did not envisage an independent agency with a separate budget. This approach was advanced as one which would "...avoid publicity and...reduce competition among the central agency and the intelligence organizations of existing departments and agencies."³¹

The State plan fitted a group, not an agency, concept. Under it, if the Authority determined that a centralized intelligence operation was necessary the Authority would appoint an executive and hold him responsible for the effective conduct of the operation. Operational support would be shared with "...personnel (including the Executive), funds and facilities...provided by the departments and agencies participating in the operation, in amounts and proportions agreed by them and approved by the Authority, based upon the relative responsibilities and capabilities of the participating departments and agencies."³²

Recommendations to the President

On 7 January 1946 the Secretaries of State, War, and Navy jointly recommended that the President establish a National Intelligence Authority and a Central Intelligence Group.³³ The recommendation was identical to the Joint Strategic Survey Committee report which had

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been submitted almost a year earlier to the Joint Chiefs with one major exception: the Secretaries did not recommend an independent budget. While an independent budget had been basic to the proposals advocated by the Secretary of War and Navy, the apprehensions advanced by the Department of State prevailed and "it seemed to be the consensus... of the three Secretaries that an independent budget should be avoided for security reasons."³⁴ Funds for the National Intelligence Authority were to be provided by the participating departments in amounts and proportion agreed upon by the members of the Authority. Within the limits of funds made available, the Director of Central Intelligence was to "employ necessary personnel and make provisions for necessary supplies, facilities and services."³⁵

Presidential Directive

The National Intelligence Authority, the office of the Director of Central Intelligence and the Central Intelligence Group were established by Presidential Directive on 22 January 1946. The Directive was substantially similar to the Secretaries' proposal although it contained no specific reference to the collection of intelligence by the Director. It has been suggested that this function was omitted solely to avoid mention of intelligence collection in a published document.³⁶

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THE WHITE HOUSE

WASHINGTON

January 22, 1946

To The Secretary of State,
The Secretary of War, and
The Secretary of the Navy.

1. It is my desire, and I hereby direct, that all Federal foreign intelligence activities be planned, developed and coordinated so as to assure the most effective accomplishment of the intelligence mission related to the national security. I hereby designate you, together with another person to be named by me as my personal representative, as the National Intelligence Authority to accomplish this purpose.

2. Within the limits of available appropriations, you shall each from time to time assign persons and facilities from your respective Departments, which persons shall collectively form a Central Intelligence Group and shall, under the direction of a Director of Central Intelligence, assist the National Intelligence Authority. The Director of Central Intelligence shall be designated by me, shall be responsible to the National Intelligence Authority, and shall sit as a non-voting member thereof.

3. Subject to the existing law, and to the direction and control of the National Intelligence Authority, the Director of Central Intelligence shall:

a. Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence. In so doing, full use shall be made of the staff and facilities of the intelligence agencies of your Departments.

b. Plan for the coordination of such of the activities of the intelligence agencies of your Departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

c. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

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d. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.

4. No police, law enforcement or internal security functions shall be exercised under this directive.

5. Such intelligence received by the intelligence agencies of your Departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions.

6. The existing intelligence agencies of your Departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.

7. The Director of Central Intelligence shall be advised by an Intelligence Advisory Board consisting of the heads (or their representatives) of the principal military and civilian intelligence agencies of the Government having functions related to national security, as determined by the National Intelligence Authority.

8. Within the scope of existing law and Presidential directives, other departments and agencies of the executive branch of the Federal Government shall furnish such intelligence information relating to the national security as is in their possession, and as the Director of Central Intelligence may from time to time request pursuant to regulations of the National Intelligence Authority.

9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions, except as provided by law and Presidential directives.

10. In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods.

Sincerely yours,

/s/ Harry Truman

Achievement through Executive Action

The 22 January 1946 Directive was a major breakthrough for the concept of a Government-wide foreign intelligence system. Responsibility for national intelligence had been clearly fixed on the office of the Director of Central Intelligence. It provided for direction and control from the President's chief advisers in international and military affairs. It provided a focal point for the correlation of foreign intelligence, its proper coordination and dissemination, and for all other needs affecting national intelligence. Clearly, central intelligence as an entity now existed.

The Directive was a compromise of diverse views which had been articulated for two years within the Executive branch. While the fledgling organization was deprived of certain attributes of independence, i. e. independent budget and authority to hire personnel, its charter was sufficiently flexible to permit it to "feel its evolutionary way and handle obstacles only in such order as it deemed best."³⁷ The details of the organization were to be worked out in the first instance by the officials responsible for its performance.³⁸

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CHAPTER II. LEGISLATIVE PROPOSALS - EXECUTIVE BRANCH ..

As early as 1944, legislation for a permanent post-war intelligence organization was seen as desirable.³⁹ In 1946 the Secretaries of State, War, and Navy believed that the preparation of organizational plans to "include drafts of all necessary legislation"⁴⁰ should be the first order of business following the establishment of central intelligence by Executive action.

CIG Consideration

Six months following the Presidential directive, Clark M. Clifford, Special Assistant to the President, was reviewing draft enabling legislation for a proposed Central Intelligence Agency (CIA). General Hoyt S. Vandenberg, USAAF, then the Director of Central Intelligence, in transmitting a revision of the draft to Mr. Clifford, wrote that the "current draft has been expanded in the light of the experiences of the last ten months and the administrative facilities available. However, it does not materially change interdepartmental relationships conceived in the original Presidential letter of January 22, 1946."⁴¹

The CIG's comprehensive legislation proposal contained a statement of policy that "foreign intelligence activities, functions, and services of the Government be fully coordinated, and, when determined in accordance with the provisions of this act, be operated centrally for the accomplishment of the national intelligence mission of the United

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States." The CIG proposal referred to programs for collecting "...foreign intelligence information by any and all means deemed effective," disseminating "...to the President and the appropriate departments and agencies of the Federal Government of the intelligence produced," and for planning and development "...of all foreign intelligence activities of the Federal Government."

Further, the National Intelligence Authority was to be statutorily prescribed and the Director of Central Intelligence was to sit as a non-voting member. The CIA was to provide the Secretariat. This followed the structural relationships established under the 22 January 1946 Directive.

The CIG proposal also sought administrative authority sufficient to the autonomy envisaged. The authority to hire personnel directly and an independent budget had been denied CIG. These were important deficiencies to be overcome.⁴² Other key elements were:

- a. appointment of the Director from either civilian or military life at \$15,000 per annum (equivalent to the salary established by the Atomic Energy Act of 1946 for the Commissioners).
- b. a Deputy Director who "shall be authorized to sign such letters, papers, and documents, and to perform such other duties as may be directed by the Director... and to act as Director in the Director's absence..."
- c. authority to employ personnel including retired personnel of the Armed Forces.

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- d. authority for the DCI "in his absolute discretion to, notwithstanding the provisions of other law, terminate the employment of personnel in the interest of the United State..." (The latter was in keeping with a similar provision in the Department of State- Appropriation Act of 1947, also 50 USC 1156, 1940, Secretaries of War and Navy, P. L. 79-470.)
- e. control of information in line with Section 10 of the Atomic Energy Act of 1946. (At the time the Department of Justice was also reviewing a proposal to revise the espionage laws as recommended by the War and Navy Departments and the FBI.)
- f. appropriations authority.

The proposed draft was fully representative of a permanent authorization for a Central Intelligence Agency. As events transpired, provisions relating to CIA's functional responsibility as well as its structural relationship within the Executive Branch would be enacted in 1947, while administrative authorities, for the most part, would be enacted in 1949.

Comprehensive enabling legislation for a Central Intelligence Agency was subordinated in early 1947 to the more pressing need of obtaining unification of the military departments. Unification legislation was accorded the highest priority within the Executive Branch.

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The concept of central intelligence was not overlooked in the unification proposals, however. President Truman's second plan for military unification envisioned a single defense establishment served by a number of coordinating agencies, some for inter-military departmental coordination and others for military-civilian coordination.⁴³ The existing National Intelligence Authority was seen as the mechanism for linking military and foreign policy and it followed that its subordinate agency, CIG, would serve as mechanism for coordinating civilian-military intelligence.

A team for drafting the National Security Act of 1947 was assembled within the White House. It included Mr. Clark M. Clifford (Special Counsel to the President), Mr. Charles S. Murphy (Administrative Assistant to the President), Vice Admiral Forrest P. Sherman (Deputy Chief for Naval Operations), and Major General Lauris Norstad (Director of Plans and Operations, War Department General Staff). The team's prime objective was unification. While there was support for prescribing the Central Intelligence Agency in the National Security Act, it was felt the administrative authorities for the Agency should be dealt with in separate legislation.

The second White House draft of the proposed National Security Act of 1947, dated 25 January 1947, covered the CIA as follows:

"SEC. 302 (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof, to be appointed from civilian or military life by the President,

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by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$15,000 per annum.

(b) Subject to existing law, and to the direction and control of the National Security Council, the Central Intelligence Agency shall perform foreign intelligence functions related to the national security.⁴⁴

(c) Effective when the Director first appointed under subsection (a) has taken office -

(1) The functions of the National Intelligence Authority (established by Directive of the President, dated January 22, 1946) are transferred to the National Security Council, and such Authority shall cease to exist.

(2) The functions of the Director of Central Intelligence, and the functions, personnel, property, and records of the Central Intelligence Group, established under such directive are transferred to the Director of Central Intelligence appointed under this Act and to the Central Intelligence Agency, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available in like manner for expenditure by the Agency."

In a 28 January 1947 memorandum to Mr. Clark M. Clifford, General Vandenberg summarized earlier exchanges of views on language for CIA in the National Security Act as "(a) setting forth a working basis for a Central Intelligence Agency to the merger; and (b) eliminating from the proposed National Security Act any and all controversial material insofar as it referred to central intelligence which might in any way hamper the successful passage of the Act."

While deferring to the higher priority of military unification, General Vandenberg urged the incorporation of three additional provisions in the final draft. First, "...the DCI shall serve as the

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adviser to the Council on all matters pertaining to national intelligence and in this capacity, will attend meetings of the Council at its discretion but shall take no part in the decisions thereof." (It is recalled that the 22 January 1946 Directive provided that the Director sit as a non-voting member of the National Intelligence Authority.) Second, rather than merely transferring the functions of the DCI and CIG under the Presidential Directive to the DCI and CIA under the proposed legislation through incorporation by reference, General Vandenberg recommended making at least a specific statement on CIA's functions such as: "...the CIA shall coordinate the Nation's foreign intelligence functions which can be efficiently performed centrally." An earlier draft had included a provision that CIA "...subject to existing law... shall perform foreign intelligence functions related to the national security." However, this provision was dropped because of the confusion surrounding the meaning of the introductory qualification "subject to existing law."

Third, General Vandenberg wanted a Deputy Director of Central Intelligence to be appointed from civilian or military life by the President and with the advice and consent of the Senate "...to provide continuity of action in the absence of the Director or should there be a vacancy in that office. The Deputy Director should be a man of such caliber and stature as adequately to serve as operations deputy to the Director."

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While General Vandenberg's recommendations were not included in the proposed "National Security Act of 1947," the points were discussed. Excerpts follow from a memorandum⁴⁵ covering the discussion at the time:

DCI as Intelligence Adviser

In a CIG conference preceding the first meeting with the White House drafters--

"...the Director also indicated his desire to have included a provision that he would serve as the adviser to the Council on National Defense (later changed to National Security Council) on matters pertaining to intelligence, and that in this capacity he would attend all meetings of the Council. It was agreed that the Director should take no part in the decisions of the Council as this was a policy-making body, and it had long been agreed that central intelligence should not be involved in policy making."

At the White House meeting with the drafters--

"...General Vandenberg stated that he was strongly opposed to the Central Intelligence Agency or its director participating in policy decisions on any matter. However, he felt that he should be present at meetings of the Council. To this General Norstad voiced serious exceptions, as he felt that the Council was already too big. He thought that the Director should not even be present as an observer, as this had proven to be cumbersome and unworkable at meetings of the Joint Chiefs of Staff. Admiral Sherman suggested, however, that the Director should normally be present at meetings of the Council, in its discretion. General Vandenberg concurred in this, as did General Norstad, and it was accepted with the additional proviso that the Joint Chiefs of Staff would also attend meetings at the discretion of the Council."

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Further--

"...the Army-Navy conferees felt that the position of the Director as the Intelligence Adviser was inherent in the position itself, and that it would not be proper to provide by law that the head of an agency under the Council should sit on the Council."

Specific Statement of Functions of CIA

"...General Vandenberg indicated the difficulties which he had had in having to go to the N.I. A. on so many problems. He felt that the difficulties of his position would be multiplied, as he would have to ask policy guidance and direction from the Council on National Defense, which consists of many more members than the N.I. A. He was assured that the intent of the act was that the CIA would operate independently and come under the Council only on such specific measures as the Council may, from time to time, desire to direct. It would not be necessary for the Agency to ask continual approval from the Council."

Further--

"...It was the final sense of the meeting that the Director of Central Intelligence should report to the Council on National Defense. As General Vandenberg indicated it would be necessary to report somewhere; that neither the President nor he was anxious to have another agency "free wheeling" around the Government. However, it was thought that the agency should have sufficient power to perform its own functions without it being necessary to have specific approval from the Council on each action."

Presidential Recommendation to Congress

On February 26, 1947, President Truman submitted to the Congress a draft entitled "National Security Act of 1947." Under Title II - coordination for National Security as it pertained to CIA - it read as follows:

"SEC. 202. (a) There is hereby established under the National

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Security Council a Central Intelligence Agency, with a Director of Central Intelligence, who shall be the head thereof, to be appointed by the President. The Director shall receive compensation at the rate of \$14,000⁴⁶ a year.

(b) Any commissioned officer of the United States Army, the United States Navy, or the United States Air Force may be appointed to the office of Director; and his appointment to, acceptance of, and service in, such office shall in no way affect any status, office, rank, or grade he may occupy or hold in the United States Army, the United States Navy, or the United States Air Force, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer on the active list shall, while serving in the office of Director, receive the military pay and allowances payable to a commissioned officer of his grade and length of service and shall be paid, from any funds available to defray the expenses of the Agency, annual compensation at a rate equal to the amount by which \$14,000 exceeds the amount of his annual military pay and allowances.

(c) Effective when the Director first appointed under subsection (a) has taken office--

(1) The functions of the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946) are transferred to the National Security Council, and such Authority shall cease to exist.

(2) The functions of the Director of Central Intelligence and the functions, personnel, property, and records of the Central Intelligence Group are transferred to the Director of Central Intelligence appointed under this Act and to the Central Intelligence Agency respectively, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available are authorized to be made available in like manner for expenditure by the Agency."

In retrospect, it is recalled that the White House drafting committee's prime concern was the unification aspects of the legislation.

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In this connection, there was a general feeling that any unnecessary enlargement of the CIA provision would lead to controversy⁴⁷ and would affect the legislative processing of the National Security Act of 1947. In addition, it was believed that detailed administrative provisions for CIA could not be adequately presented as part of the National Security Act of 1947, simply because of the lack of time.

As events transpired, however, Congress was to delve into the CIA provisions at some length. In fact, during the floor discussion of the bill in the House chamber, Mr. Carter Manasco, (D., Alabama), a member of the House Committee which marked up the bill, said: "This section on central intelligence was given more study by our Subcommittee and the Full Committee than any other section of the bill."⁴⁸

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CHAPTER III. CONGRESSIONAL CONSIDERATION OF THE
NATIONAL SECURITY ACT OF 1947

Background

On 26 February 1947 the President transmitted a draft bill entitled "National Security Act of 1947" to the President of the Senate pro tempore and the Speaker of the House of Representatives and recommended its enactment by the 80th Congress. Prior to this date consideration had been given in both Houses to the need for a Government-wide foreign intelligence service and the structure it should take.

House: During the 79th Congress, the House Committee on Military Affairs had issued "A report on the System Currently Employed in the Collection, Evaluation, and Dissemination of Intelligence Affecting the War Potential of the United States."⁴⁹ The report recognized the need for strong intelligence as the "nation's final line of defense," and made nine very specific recommendations:

Recommendation 1: That the National Intelligence Authority, established on January 22, 1946, by Presidential directive, be authorized by act of Congress.

Recommendation 2: That the National Intelligence Authority shall consist of the Secretaries of State, War, and the Navy, or deputies for intelligence.

Recommendation 3: That the Central Intelligence Group receive its appropriations direct from the Congress.

Recommendation 4: That the Central Intelligence Group has complete control over its own personnel.

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Recommendation 5: That the Director of the Central Intelligence Group be a civilian appointed for a preliminary term of two years and a permanent term of 10 years, at a salary of at least \$12,000 a year.

Recommendation 6: That the Director of the Central Intelligence Group be appointed by the President, by and with the consent of the Senate.

Recommendation 7: That the Director of Central Intelligence shall (1) accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence, and in so doing making full use of the staff and facilities of the intelligence agencies already existing in the various Government departments; (2) plan for the coordination of such of the activities of the intelligence agencies of the various Government departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the national intelligence mission; (3) perform, for the benefit of said intelligence agencies, such services of common concern related directly to coordination, correlation, evaluation, and dissemination as the National Intelligence Authority shall determine can be more efficiently accomplished centrally; (4) perform such other similar functions and duties related to intelligence affecting the national security as the Congress and the National Intelligence Authority may from time to time direct. It is specifically understood that the Director of Central Intelligence shall not undertake operations for the collection of intelligence. (Emphasis added)

Recommendation 8: That Paragraphs 2, 4, 5, 6, 7, 8, 9, and 10 of the Presidential directive of January 22, 1946, relating to the establishment of a National Intelligence Authority be enacted into law, with such revisions in wording as may seem necessary.

Recommendation 9: That the Army be requested sympathetically to examine further the question of the establishment of an Intelligence Corps for the training, development, and assignment of especially qualified officers.

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Senate: In terms of legislative processing during the 79th Congress, the Senate got further than the House. The Senate Committee on Military Affairs reported out a bill proposing a National Security Council outside of the national defense establishment and a Central Intelligence Agency for the purpose of coordinating military and civilian programs, policies, and plans in the foreign intelligence field.⁵⁰ This bill was introduced as S. 2044 by Senators Lister Hill (D., Ala.), Elbert D. Thomas (D., Utah), and Warren R. Austin (R., Vt.) on 9 April 1946, pursuant to President Truman's unification message of 19 December 1945.

The need for "national intelligence" was underscored by General George C. Marshall in hearings before the Senate Committee on Military Affairs:

"Intelligence relates to purpose as well as to military capacity to carry out that purpose. The point, I think, is we should know as much as we possibly can of the possible intent and the capability of any other country in the world... Prior to entering the war we had little more than what a military attache could learn at a dinner, more or less, over the coffee cups... Today I think we see clearly we must know what the other fellow is planning to do, in our own defense... The important point is that the necessity applies equally outside of the armed forces. It includes the State Department and other functions of the Government, and it should therefore be correlated on that level."⁵¹

While S. 2044 was favorably acted upon by the Senate Military Affairs Committee, the Senate Committee on Naval Affairs, which had concurrent jurisdiction, did not report it out.

Thus, the crucible for central intelligence was carried over to the first session of the 80th Congress in the Presidential draft of the National Security Act of 1947. Title I of the draft concerned the "National Defense Establishment." Title II, entitled "Coordination for National Security," provided for the National Security Council and the Central Intelligence Agency.⁵²

Legislative Processing

Faced with a complicated and vital legislative task related to the nation's future security, Congress deliberated on the National Security Act of 1947 for nearly five months.

Senate: Introduction of a bill incorporating the President's draft was temporarily delayed while the Senate determined which standing committee would have jurisdiction over the bill. The Committee on Expenditures in the Executive Departments (now the Committee on Government Operations) questioned the decision of the President pro tempore, Arthur Vandenburg (R., Mich.) in referring the measure to the Armed Services Committee.⁵³ The Senate upheld the President pro tempore's ruling on 3 March 1947 and Senator Chan Gurney (R., S.D.), Chairman of the Senate Armed Services Committee, then introduced the measure as S. 758. The Senate Armed Services Committee held hearings for ten weeks, went into executive session on 20 May, and reported out an amended version of S. 758 on 5 June.⁵⁴ The bill was considered by the Senate on 7 and 9 July and was approved by voice vote.

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House: The measure eventually reported to the House was introduced on 28 February 1947 as H. R. 4214 by Chairman Clare Hoffman (R., Mich.) of the Committee on Expenditures in the Executive Departments (now the Committee on Government Operations). This bill was the subject of hearings which commenced on 2 April 1947 and concluded on 1 July. A favorable report was issued on 16 July. On 19 July H. R. 4214 was considered by the House, amended and passed by a voice vote. Immediately following this action, the House passed S. 758 after substituting the provisions of its own measure.

Conference: S. 758 emerged from Conference Committee on 24 July 1947. The Senate accepted the Conference Report the same day by a voice vote and the House followed suit on the 25th of July.

Legislative Record on CIA

The legislative record on CIA in the National Security Act of 1947 consists of testimony before committees, committee reports, floor discussions, amendments proposed and the provisions which were ultimately adopted. Overall, this record identifies the issues raised, the alternatives considered, and the reasons or explanations for the choices or compromises ultimately approved.

Of the many factors having a bearing on the type of legislative record made on CIA, two seem especially deserving of mention. First, security inhibited the full development of the public legislative record

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on CIA. In opposing an amendment on the floor in the House, Mr. Manasco (D., Ala.) underscored this handicap by revealing that "Many witnesses appeared before our Committee. We were sworn to secrecy, and I hesitate to even discuss this section, because I am afraid that I may say something, because the Congressional Record is a public record, and divulge something here that we received in that committee that would give aid and comfort to any potential enemy we have."⁵⁵

Second, CIA was only one aspect of a complicated and controversial legislative proposal dealing primarily with military unification. The controversy surrounding the "National Military Establishment" also engulfed other provisions of the Act, including CIA. This, however, is not meant to imply the absence of independent reservations concerning the CIA.

Considering all of these factors, a fairly extensive public record was made on the CIA section. Further, the reasons and rationale for CIA related legislative action is, for the most part, readily identifiable in the public record.

The White House drafting team was correct in estimating that the CIA section had the potentiality for being controversial but it was wrong in assuming that extensive deliberation could be avoided by reducing the CIA section down to "minimal provisions." Congressional interest in providing for a CIA was clearly underestimated. Probably

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the most striking aspect of the Congressional interest in CIA was the overwhelming support for institutionalizing the Agency in statute as a positive step towards providing for the nation's future security.

(With this introduction the legislative record on the CIA section in the National Security Act of 1947 is developed and organized according to the five dominant legislative themes which evolved:

- (1) Need for a Central Intelligence Agency;
- (2) Position of CIA within the Executive Branch;
- (3) Statutory specification of functions for CIA;
- (4) Civilian status of the Director of Central Intelligence; and
- (5) Relationship to internal security.

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CHAPTER IV. NEED FOR CENTRAL INTELLIGENCE

The need for institutionalizing central intelligence was established in certain committee findings during the 79th Congress and was to be stressed again during the 80th Congress.

In anticipation of hearings on S. 758, Senator Thomas⁵⁶ made a major address to the Senate on the "President's" bill and emphasized the need for a Central Intelligence Agency:⁵⁷

"Neither the War Department nor the Navy Department had an intelligence service adequate to our needs when the war broke out. The intelligence agencies in each Department operated separately for the most part, except for the exchange of routine military and naval attache reports. There was no real integration of intelligence at the operating level, and no established liaison with the State Department. Though funds were inadequate, there was much duplication of effort by the services.

"The war brought substantial appropriations and drastic reorganization. The Office of Strategic Services was finally set up under the jurisdiction of the Joint Chiefs of Staff, and acted as the central coordinating agency in intelligence matters. Later, the Joint Intelligence Committee and its subcommittees made further provision for the coordination of intelligence activities. In spite of these and other changes, however, much unnecessary duplication existed in the intelligence services of the State, War, and Navy Departments. The significance of the collection, analysis, and evaluation of information concerning foreign countries is no less great now than it was during the war. The effective conduct of both foreign policy and military policy is dependent on the possession of full, accurate, and skillfully analyzed information concerning foreign countries. With our present world-wide sphere of international responsibility and our position among the world powers, we need the most efficient intelligence system that can be devised. Organization, of course, is not the whole story. We do know, however, that there is no returning to the prewar system, where the War, Navy and State Departments went their respective ways. We have now a central intelligence agency established by executive action. Provision for such an agency should

be made in permanent legislation. It seems entirely logical that such an agency should be placed in the framework of any agency that might be set up to coordinate military and foreign policies."

Senate Armed Services Committee

The theme so strongly stated by Senator Thomas was reiterated and amplified before the Senate Armed Services Committee during the hearing on S. 758: (Excerpts follow)

Vice Admiral Forrest Sherman (member of the White House drafting team and detailed by the Secretary of Navy to work with the Military Affairs Committee on the Common Defense Act of 1946): "I consider the Central Intelligence Agency to be a vital necessity under present world conditions. Its necessity will increase with our greater international responsibilities as the power of sudden attack is amplified by further developments in long range weapons and weapons of mass destruction."⁵⁸

Lt. General Hoyt S. Vandenberg (Director of Central Intelligence):⁵⁹ I sincerely urge adoption of the intelligence provisions of this bill. Section 202 will enable us to do our share in maintaining the national security. It will form a firm basis on which we can construct the finest intelligence service in the world.

"In my opinion, a strong intelligence system is equally if not more essential in peace than in war. Upon us has fallen leadership in world affairs. The oceans have shrunk until today both Europe and Asia border the United States almost as do Canada and Mexico. The interests, intentions, and capabilities of the various nations on these land masses must be fully known to our national policy makers. We must have this intelligence if we are to be forewarned against possible acts of aggression, and if we are to be armed against disaster in an era of atomic warfare...

"I think it can be said without successful challenge that before Pearl Harbor we did not have an intelligence service in this country comparable to that of Great Britain or France or Russia or Germany or Japan. We did not have one because the people of the United States would not accept it. It was felt that there was something un-American about espionage and even about intelligence generally. There was a feeling that

all that was necessary to win a war-if there ever were to be another war-was an ability to shoot straight. One of the great prewar fallacies was the common misconception that, if the Japanese should challenge us in the Pacific, our armed services would be able to handle the problem in a matter of a few months at most.

"All intelligence is not sinister, not is it an invidious type of work. But before the Second World War, our intelligence services had left largely untapped the great open sources of information upon which roughly 80 percent of intelligence should normally be based. I mean such things as books, magazines, technical and scientific surveys, photographs, commercial analyses, newspapers, and radio broadcasts, and general information from people with a knowledge of affairs abroad. What weakened our position further was that those of our intelligence services which did dabble in any of these sources failed to coordinate their results with each other.

"The Joint Congressional Committee to Investigate the Pearl Harbor Attack reached many pertinent conclusions regarding the shortcomings of our intelligence system and made some very sound recommendations for its improvement. We are incorporating many of these into our present thinking...

"The committee showed that some very significant information had not been correctly evaluated. It found that some of the evaluated information was not passed on to the field commanders. But, over and above these failures were others, perhaps more serious, which went to the very structure of our intelligence organizations. I am talking now of the failure to exploit obvious sources; the failure to coordinate the collection and dissemination of intelligence; the failure to centralize intelligence functions of common concern to more than one department of the Government, which could more efficiently be performed centrally.

"In the testimony which has preceded mine in support of this bill- by the Secretaries of War and the Navy, General Eisenhower, Admiral Nimitz, and General Spaatz, among others- there has been shown an awareness of the need for coordination between the State Department and our foreign political policies one one hand and our National Defense Establishment and its policies on the other. Similarly with intelligence, there must be coordination and some centralization, so that no future congressional committee can possibly ask the question asked by the Pearl Harbor Committee:

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'Why, with some of the finest intelligence available in our history - why was it possible for a Pearl Harbor to occur?'

"The committee recommended that intelligence work have centralization of authority and clear-cut allocation of responsibility. It found specific fault with the system of dissemination of intelligence to those who had vital need of it. It stated that '...the security of the Nation can be insured only through continuity of service and centralization of responsibility in those charged with handling intelligence.'

"It found that there is no substitute for imagination and resourcefulness on the part of intelligence personnel, and that part of the failure in this respect was '...the failure to accord to intelligence work the important and significant role which it deserves.'

"The committee declared that '...efficient intelligence services are just as essential in time of peace as in war.'

"All of these findings and recommendations have my hearty concurrence. In the Central Intelligence Group, and in its successor which this bill creates, must be found the answer to the prevention of another Pearl Harbor.

"As the United States found itself suddenly projected into a global war, immense gaps in our knowledge became readily apparent. The word 'intelligence' quickly took a fashionable connotation. Each new wartime agency - as well as many of the older departments - soon blossomed out with intelligence staffs of their own, each producing a mass of largely uncoordinated information. The resultant competition for funds and specialized personnel was a monumental example of waste.

"The War and Navy Departments developed full political and economic intelligence staffs, as did the Research and Analysis Division of the OSS. The Board of Economic Warfare and its successor, the Foreign Economic Administration, also delved deeply into fields of economic intelligence. Not content with staffs in Washington, they established subsidiary staffs in London and then followed these up with other units on the Continent.

"When, during the war, for example, officials requested a report on the steel industry in Japan or the economic conditions in the Netherlands East Indies, they had the reports of the Board of Economic Warfare, G-2, ONI, and the OSS from which to choose. Because these agencies had competed to secure the best personnel, it was necessary for each of them to back up

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its experts by asserting that its particular reports were the best available, and that the others might well be disregarded.

"As General Marshall stated in testifying on the unification bill before the Senate Military Affairs Committee last year, '... Prior to entering the war, we had little more than what a military attache could learn at a dinner, more or less over the coffee cups.'

"From this start, we suddenly had intelligence springing up everywhere. But nowhere was its collection, production, or dissemination fully coordinated- not even in the armed forces. General Marshall pointed this out in his testimony when he mentioned '... the difficulty we had in even developing a Joint Intelligence Committee. That would seem to be a very simple thing to do, but it was not at all.'

"There are great masses of information available to us in peace as in war. With our wartime experience behind us, we know now where to look for material, as well as for what to look.

"The transition from war to peace does not change the necessity for coordination of the collection, production, and dissemination of the increasingly vast quantities of foreign-intelligence information that are becoming available. This coordination the Central Intelligence Agency will supply...

"President Roosevelt established the Office of Strategic Services for the purpose of gathering together men of exceptional background and ability who could operate in the field of national, rather than departmental, intelligence. In weighing the merits of the OSS, one should remember that it came late into the field. It was a stopgap. Overnight, it was given a function to perform that the British, for instance, had been developing since the days of Queen Elizabeth. When one considers these facts, the work of the OSS was quite remarkable and its known failures must be weighed against its successes. Moreover, it marked a crucial turning point in the development of United States intelligence. We are now attempting to profit by their experiences and mistakes.

"Having attained its present international position of importance and power in an unstable world, the United States should not, in my opinion, find itself again confronted with the necessity of developing its plans and policies on the basis of intelligence collected, compiled, and interpreted by some foreign government. It is common knowledge that we found ourselves in just that position at the beginning of World War II...

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"For months we had to rely blindly and trustingly on the superior intelligence system of the British. Our successes prove that this trust was generally well placed. However, in matters so vital to a Nation having the responsibilities of a world power, the United States should never again have to go hat in hand, begging any foreign government for the eyes - the foreign intelligence - with which to see. We should be self-sufficient. The interests of others may not be our interests...

"The need for our own coordinated intelligence program has been recognized in most quarters. The Pearl Harbor disaster dramatized that need and stopgap measures were adopted. As the war drew to a close, the President directed the Joint Chiefs of Staff to study the problem and draft recommendations for the future.

"By the assignment of primary fields of intelligence responsibilities, we are - in the fields of collection, production, and dissemination - preventing overlapping functions - that is, eliminating duplicate roles and missions, and eliminating duplicate services in carrying out these functions."

House Committee

Testimony before the House Committee on Expenditures in the Executive Departments provided additional insights into the need for structuring foreign intelligence functions on a Government-wide basis.

General Carl Spaatz, Commanding General, Army Air Force:
"The bill provides the basic elements of security of which we may mention five... Fourth, correct intelligence. The bill provides for enlargement of our capacity to know the capabilities of our possible enemies, how they can attack us, and with what. Each service will retain its own technical intelligence with its own trained attaches abroad. The CIA will coordinate information from all the services, as well as from other branches of the Government."60

Fleet Admiral Chester Nimitz: "The bill will establish a Central Intelligence Agency with the responsibility for collection of information from all available sources, evaluation of that information and dissemination thereof. This Agency is intended to secure complete coverage of the wide field of intelligence and should minimize duplication. The bill recognizes that military intelligence is a composite of authenticated

and evaluated information covering not only the armed forces .. establishment of a possible enemy but also his industrial capacity, racial traits, religious beliefs, and other related aspects."⁶¹

Secretary James V. Forrestal (Secretary of the Navy;⁶² listed the CIA second among the essentials of the bill, after the National Security Council): "The need for that (CIA) should be obvious to all of us."⁶³

Rep. W. J. Dorn (D., S.C.): "With regard to the Central Intelligence Agency - I may be wrong, but I have always felt that if Admiral Kimmel had had proper intelligence from Washington the attack on Pearl Harbor would not have occurred, or at least we would have been able to meet it better. From your experience, do you think that this Central Intelligence Agency alone would warrant passage of this bill?"

Vice Admiral Arthur Radford: "Of course, I think it is most important. Actually it is in existence now. It is already functioning."⁶⁴

Committee Reports

The Senate Committee report on S. 758 concluded: "To meet the future with confidence, we must make certain...that a Central Intelligence Agency collects and analyzes that mass of information without which the Government cannot either maintain peace or wage war successfully."⁶⁵

The House Committee report on H.R. 4214 was equally clear and succinct in its conclusion: "The testimony received by your committee discloses an urgent need for a continuous program of close coordination between our domestic, foreign and military policies so that we may always be able to appraise our commitments as a Nation in the light of our resources and capabilities. This, your committee

feels, can be accomplished by the Central Intelligence Agency...

In order that the Council (National Security Council), in its deliberations and advice to the President, may have available adequate information, there is provided a permanent organization under the Council, which will furnish that information."⁶⁶

Floor Discussion

Senate: The Senate Armed Service Committee findings and report were re-echoed in floor statements during the Senate's discussion of S. 758:

Senator Chan Gurney (R., S. D.) (Chairman of the Armed Services Committee): "As an important adjunct to the National Security Council there is a provision for a Central Intelligence Agency, which fills a long recognized demand for accurate information upon which important decisions, relating to foreign military policy can be based."⁶⁷

Senator Raymond Baldwin (R., Conn.): Under the Council there is established a central intelligence agency to provide coordinated, adequate intelligence for all Government agencies concerned with national security. When one reads the record of the past war in regard to that field it is found that there was much to be desired in the way intelligence was covered, and there was great conflict about it. I say nothing here in depreciation of the men who were engaged in the intelligence service, because some remarkable and extremely courageous things were done. Nevertheless, we demonstrated from our experience the need of a central intelligence agency..."⁶⁸

Senator Lister Hill (D., Ala.): "It would (S. 758) provide security measures at all times, rather than only when hostilities threaten. It creates... a central intelligence agency which is so essential for the Government to maintain peace and without which the Government cannot wage war successfully."⁶⁹

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House. The need for centralizing national intelligence drew wide support from many members of the House during the floor discussion of H. R. 4214:

(Rep. James Wadsworth (R., N. Y.): "This (H. R. 4214 and the instrumentalities it establishes) links the military policy with foreign policy, all measured by our resources and the potentialities of other people." ⁷⁰

Rep. Fred Busbey (R., Ill.) (although troubled with certain features of the CIA section): "I am not opposed to a central intelligence agency. . . . You remember Pearl Harbor. They had intelligence, but it was not correlated and evaluated correctly." ⁷¹

Rep. Walter Andrews (R., N. Y.): "On the next level above the National Military Establishment there is provided the National Security Council with the President as chairman, which will effectively coordinate our domestic and foreign policies in the light of sound information furnished by the Central Intelligence Agency." ⁷²

Rep. Robert Sikes (D., Fla.): "During the intervening years between wars we have never had a proper balance between our foreign and military policies. . . . We have never been fully informed of the capabilities, potential or intent of likely enemies. . . . This is another time when we can well say, 'Remember Pearl Harbor.'" ⁷³

Rep. Dewey Short (R., Mo.): "Mr. Chairman, on every score and by every count we should vote adequate funds for. . . our Central Intelligence - which has been lamentably weak - . . . These (including Central Intelligence) are the things above all others which will guarantee our security." ⁷⁴

(Rep. W. J. Bryan Dorn (D., S. C.): "Mr. Chairman, one of the most important features of this bill is the Central Intelligence Agency. I would like for you to turn back with me this afternoon to the most terrible period preceding World War II. Why, you had most of the newspapers and people in this country thinking that Adolf Hitler was a comic character, that a war in Europe could not last through the winter - I remember those editorials quite well - that Germany would not last through the winter of 1939. I remember officers of the Navy coming back from observation posts in the Pacific and saying that the Japanese could not

last 3 weeks in a war with America. The Government in Washington was stunned and shocked beyond belief when it suddenly realized that Paris and France would fall.

"An important Member of the other body, who is still serving in that body, said that a few bombs on Tokyo would knock them out of the war. What a woeful lack of intelligence as to the potential power of our enemies. People were saying that Mussolini would not attack; that he was only bluffing. Around the world there was a total lack of knowledge of those forces that were marshalling to destroy American democracy. I tell you gentlemen of the committee that your central intelligence agency is a very important part of this bill."75

Rep. Chet Holifield (D., Calif.): "I want to read to you some of the conclusions of the Pearl Harbor Committee, as follows. Their conclusions were: 'That' the Hawaiian Command failed to discharge their responsibility in the light of the warnings received from Washington, and other information possessed by them and the principal command by mutual cooperations. (B) They failed to integrate and coordinate their facilities for defense, to alert properly the Army and Navy Establishments in Hawaii, particularly in the line of warning and intelligence available to them during the period November 27 to December 7, 1941. They failed to effect liaison on a basis adequately designed to acquaint each of them with the operations of the other, which was necessary to their joint security, and to exchange fully all significant intelligence, and they also failed to appreciate and evaluate the significance of the intelligence and other information available to them.' "76

Rep. Robert A. Harness (R., Ind.): "Now a word about the Central Intelligence Agency. When such an organization was first proposed I confess I had some fear and doubt about it. Along with other members of the Committee, I insisted that the scope and authority of this Agency be carefully defined and limited. Please bear in mind that this is a bold departure from American tradition. This country has never before officially resorted to the collection of secret and strategic information in time of peace as an announced and fixed policy. Now, however, I am convinced that such an Agency as we are now considering is essential to our national security."77

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Rep. Wadsworth (R., N. Y.): "...In addition, under the Council there would be another element which is to advise the Council, subject to regulations made by the Council, in the field of Intelligence, in the foreign field; and there is established a central intelligence agency subject to the Council headed by a director. The function of that agency is to constitute itself as a gathering point for information coming from all over the world through all kinds of channels concerning the potential strength of other nations and their political intentions. There is nothing secret about that. Every nation in the world is doing the same thing. But it must be remembered that the Central Intelligence Agency is subject to the Council and does not act independently. It is the agency for the collecting and dissemination of information which will help the President and the Council to adopt wise and effective policies. So with the information of that sort concerning other nations and information coming in with respect to our own resources, both of which are available to the Council and President, we will have for the first time in our history a piece of machinery that should work and it is high time that we have it. We have never had it before. During this last war all sorts of devices were resorted to, obviously in great haste, to accomplish a thing like this. You may remember the huge number of special committees, organizations and agencies set up by Executive Order in an attempt to catch up with the target. We have learned as a result of the war that we should have some permanent organization, and that is the one proposed in this bill."⁷⁸

Rep. Manasco (D., Ala.): "If we had had a strong central intelligence organization, in all probability we would never had had the attack on Pearl Harbor; there might not have been a World War II... I hope the committee will support the provision in the bill, because the future security of our country in a large measure depends upon the intelligence we get. Most of it can be gathered without clandestine intelligence, but some of it must be of necessity clandestine intelligence. The things we say here today, the language we change, might endanger the lives of some American citizens in the future."⁷⁹

Thus, there was a consensus of agreement, almost reaching to unanimous proportions, that the concept of central intelligence should

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be ratified and embodied into statute. However, beyond this point of almost total accord, differences of opinion would arise as more specific consideration relating to CIA was undertaken.

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CHAPTER V. POSITION WITHIN EXECUTIVE BRANCH

The position that should be prescribed for the CIA within the Executive Branch was understandably of considerable interest. This was the very marrow of the central intelligence concept and an antecedent to its disposition was an appreciation of the "supra-departmental" nature of the relationships which had been established within the "intelligence community" under the National Intelligence Authority.

It is recalled that the 22 January 1946 Presidential Directive⁸⁰ placed the Director of Central Intelligence and the Central Intelligence Group under the control of the President's chief advisors in international and military affairs, the Secretaries of State, War, and Navy, and the personal representative of the President. The DCI was a non-voting member of the NIA.

Following this pattern, the proposed National Security Act of 1947 simply established "...under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof..." and transferred "...the functions of the National Intelligence Authority...to the National Security Council."⁸¹

These functions were to plan, develop, and coordinate all Federal foreign intelligence activities "...to assure the most effective accomplishment of the intelligence mission related to the national security."⁸²

The functions of the DCI and the CIG under the NIA were transferred also to the DCI and the CIA Act.

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In pursuing the meaning of these relationships three major questions were considered. First, could central intelligence operate effectively by reporting to a group (National Security Council) rather than to an individual? Second, would satisfactory relationships be maintained between CIA and the departments and their intelligence agencies? Third, what relationship should exist between the DCI and the NSC?

NSC Relationship

House. During Committee hearings in the House, Representative Walter Judd (R., Minn.) pursued the respective merits of the CIA reporting to the NSC or to an individual:

Rep. Judd: "I have concern as to whether the intelligence agency provided in the bill is given anywhere near the importance it deserves... it seems to be a joint and hydra-headed agency which will weaken our intelligence rather than strengthen it."

Dr. Vannevar Bush (Director of the Office of Emergency Management, Scientific Research and Development): "... The Central Intelligence Agency provided for (in the bill) links the military establishment and the State Department, and hence cannot logically be placed under the Secretary of National Defense. It is a joint matter. It might be reporting directly to the President..."

Rep. Judd: "I have never seen a hydra-headed organization which functions as well as one headed by a single man. If we were caught flat-footed without proper intelligence at the outbreak of another war, it might be disastrous."⁸³

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Rep. Judd: "Regarding the CIA, do you think that it ought to be under the National Security Council, or directly under the Secretary of National Defense, on a par with the National Security Resources Board, the Joint Research and Development Board, the National Security Resources Board. The CIA is put under the National Security Council so that it has a dozen heads. It seems to me that this is so important that it ought to be on a par with those other agencies."

Vice Admiral Radford: "I feel that the CIA should be under the National Security Council."

Rep. Judd: "You don't think that its reports will make the rounds and never get any action?"

Vice Admiral Radford: "I hardly think so. I think its handling of reports can be controlled by the Director. I am sure it would be."⁸⁴

Senate. In a statement before the Senate Committee, Mr. Allen W. Dulles, who made extraordinary contributions to the success of the OSS and who eventually was to become the first civilian to be appointed Director of Central Intelligence, questioned the desirability of the Director reporting to a large National Security Council:⁸⁵

"...this (National Security) Council will have at least six members, and possibly more, subject to Presidential appointments. From its composition it will be largely military although the Secretary of State will be a member. If precedent is any guide, it seems unlikely, in view of the burden of work upon all the members of this Council, that it will prove to be an effective working body which will meet frequently, or which could give much supervisory attention to a central intelligence agency. It would seem preferable that the Chief of Central Intelligence should report, as at present, to a smaller body, of which the Secretary of State would be the chairman, and which would include the Secretary of National Defense, and a representative of the President, with the right reserved to the Secretaries of State and of National Defense to be represented on this small board by

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deputies, who should have at least the rank of Assistant Secretary. And this board must really meet and assume the responsibility for advising and counseling the Director of Intelligence, and assure the proper liaison between the Agency and these two Departments and the Executive."

(However, under no circumstances did Mr. Dulles want CIA to be organized under an individual policy maker;⁸⁶

"The State Department, irrespective of the form in which the Central Intelligence Agency is cast, will collect and process its own information as a basis for the day-by-day conduct of its work. The armed services intelligence agencies will do likewise. But for the proper judging of the situation in any foreign country it is important that information should be processed by an agency whose duty it is to weigh facts, and to draw conclusions from those facts, without having either the facts or the conclusions warped by the inevitable and even proper prejudices of the men whose duty it is to determine policy and who, having once determined a policy, are too likely to be blind to any facts which might tend to prove the policy to be faulty. The Central Intelligence Agency should have nothing to do with policy. It should try to get at the hard facts on which others must determine policy. The warnings which might well have pointed to the attack on Pearl Harbor were largely discounted by those who had already concluded that the Japanese must inevitably strike elsewhere. The warnings which reportedly came to Hitler of our invasion of North Africa were laughed aside. Hitler thought he knew we didn't have the ships to do it. It is impossible to provide any system which will be proof against the human frailty of intellectual stubbornness. Every individual suffers from that. All we can do is to see that we have created the best possible mechanism to get the unvarnished facts before the policy makers, and to get it there in time."

(Chairman Gurney of the Senate Armed Services Committee became particularly interested in whether the CIA should report to the National Security Council or to an individual, particularly the Secretary of National Defense. In line with this interest he arranged

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for Mr. Charles S. Cheston, a former Assistant Director of the Office of Strategic Services, to meet with Admiral Roscoe Hillenkoetter, who succeeded General Vandenberg as DCI on 1 May 1947.

Mr. Cheston's viewpoint was subsequently made a matter of record in the Senate hearings:⁸⁷

"...It has been amply demonstrated that problems of peace and war in modern times require total intelligence. Each of the principal departments and agencies of Government requires information for the determination of basic questions of policy, the collection and analysis of which are entirely outside the scope of its own operations. It does not solve the problem to create a kind of clearing house for information gathered in the ordinary operations of the several departments. What is needed is an effective, integrated, single agency with clearly defined duties and authority to analyze and correlate information from all sources and, wherever necessary, to supplement existing methods of collection of information. Such an agency must serve all principal departments of the Government and also bring together the full and comprehensive information upon which national policy must be based. It should not supplant existing intelligence units within the several departments. Every effort should be made to improve and strengthen these units wherever possible. The problem is national and not departmental. And it will not be solved by having the policies and operations of such an agency determined by a committee of Cabinet members, whose primary duty is to discharge the full-time responsibilities of their own offices."

Following a meeting with Mr. Cheston in Philadelphia on Memorial Day, Admiral Hillenkoetter wrote a letter to Senator Gurney, from which the following is excerpted:

"The third point (advocated by Mr. Cheston) is that the Director should report to an individual rather than a committee. As I previously stated before the Senate Appropriations Committee, I feel that this is a matter to be determined by the Congress rather than by me. On purely theoretical

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grounds, it would, of course, be best to report to one individual rather than a group. However, I can work with a Council equally well, and see no great difference in either solution that Congress may determine. There may be some question as to the wisdom of having the Director of Central Intelligence report to the Secretary of National Defense. This, in effect, might be considered as placing the Agency within the military establishment, which would not, in all probability, be satisfactory to the State Department. They have a great interest in the operations of the Agency, and their contributions in the intelligence field are particularly important in time of peace, when the Foreign Service can operate throughout the world.

"As General Donovan stated in his memorandum to you of 7 May 1947, intelligence 'must serve the diplomatic as well as the military and naval arms.' This can be best done outside the military establishment. As General Donovan stated further, '... Since the nature of its work requires it to have status, it should be independent of any Department of the Government (since it is obliged to serve all and must be free of the natural bias on operating Departments).' "

When this matter came to the Senate floor, Senator Robertson of the Senate Armed Services Committee proposed an amendment elevating the Secretary of National Security (Secretary of Defense) to a position "... where he will be over the National Security Council, the Central Intelligence Agency, and the National Security Resources Board, and over the entire military establishment as well."⁸⁸ The emphasis behind this amendment, however, was to make the Secretary of Defense the coordinator of national security and immediately under the President. It was only collaterally related to central intelligence. Senator Gurney, in opposing the amendment, said, "We do not believe that the (Secretary of Defense) should in any way control, by means of a superior position, the conclusions which emanate from the Security Council..."⁸⁹ The amendment was defeated.

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Relationship with Intelligence Community

While the CIA was established under the National Security Council as proposed by Administration, Congressional consideration helped to illuminate the supra-departmental nature of the Agency's function as much as it did to ratify earlier Executive Branch action.

The second concern relating to the establishment of the CIA under the National Security Council was whether this arrangement would support satisfactory relationships between the CIA and the departments and their intelligence agencies.. This concern was brought out in the following colloquy during the Senate Committee hearings: ⁹⁰

Senator Tydings (D., Md.): "...when you get down to the Central Intelligence Agency, which certainly is one of the most important of all the functions set forth in the bill, I notice that it reports directly to the President and does not seem to have any line running to the War Department, or the Navy Department, or to the Secretary for Air. And I was wondering if that rather excluded position, you might say, was a wholesome thing. It seems to me that Central Intelligence Agency ought to have more direct contact with the Army and the Navy and the Air Force; and as I see it on the chart here, it is pretty well set aside and goes only to the President. What is the reason for that?"

Admiral Sherman: "Well, sir, this diagram shows the primary control of the Central Intelligence Agency through the National Security Council which, of course, is responsible to the President. But, of course, the Central Intelligence Agency, by its detailed directive, takes information in from the military services and also supplies them with information.

"In other words, it is a staff agency and controlled through the National Security Council, which is supported by the military services, and in turn, supports them."

Senator Tydings: "It seems to me that of course they would diffuse such information as a matter of orderly procedure

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to the Army, Navy, and Air Force, as they collected the information and as they deemed it pertinent. But I would feel a little more secure about it if there were a line running from that agency to the War Department, the Navy Department, and the Air Force, rather than have it go up through the President and back again. Because the President is a rather busy man, and while he has control over it, one of its functions, it seems to me, ought to be to have a closer tie-in with the three services than the chart indicates."

Admiral Sherman: "Well, sir, that is the trouble with the diagram. Actually, the Security Council, placed directly under it, has members of the three departments, the Secretary of National Defense, the Central Intelligence Agency, who collaborates very closely with Military and Naval Intelligence, and there are a good many other cross-relationships."

Senator Tydings: "I realize that, but even so, I think intelligence is about as important a part of running a war as there is, as I know you will agree. And it is rather set off there by itself, and is only under the President; which is all right for general direction purposes, but I do not feel satisfied in having it over there without some lines running to the War Department, the Navy Department, and the Air Force, even though that might follow and they might do it anyhow!"

Admiral Sherman: "Well, in a further development of this chart, we might show a line of collaboration and service and so on, extending from the Central Intelligence Agency to the three departments, and to those others."

Senator Tydings: "To the Joint Chiefs of Staff anyway."

Admiral Sherman: "They serve the Joint Chiefs of Staff, as a matter of fact. We have a Central Intelligence (man) in the Policy Council of the Research and Development Board at the present time."

Senator Tydings: "If you ever do another chart, will you do me the favor of connecting that up with those three departments and with the Joint Chiefs of Staff? Because it looks like it is set up in that way to advise the President, more than to advise the services and the Joint Chiefs of Staff; which, of course, is not the intention of it at all, in my opinion."

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Admiral Sherman: "We tried, in this particular chart, to show only the primary line of control, with the exception of the dotted line from the President to the Joint Chiefs of Staff, which is there for constitutional reasons."

Senator Tydings: "Well, I hope that my comments will cause us to find some way that we can make sure that someone will offer an amendment from the War Department or the Navy Department that the Intelligence Agency is to have direct tie-in with the Joint Chiefs and the Army, Navy, and Air Force. Otherwise, we may have another Pearl Harbor controversy, with the question arising, 'Who got the information?' And the reply, 'It was not transmitted.' That is one thing that should not happen again. And as this is set up, it would lend the layman the opinion that it was more or less detached, rather than an integral part of the three services."

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Senator Tydings: "Admiral, that is an awfully short bit of explanation, under the caption "Central Intelligence Agency," the way it is set up here, separately, to be appointed by the President, and superseding the services now run by the Army and the Navy, I respectfully submit to you and to General Norstad that it might be wise to put an amendment in there, in order to make certain that the thing is understood; that this Central Intelligence Agency shall service the three departments and the Joint Chiefs of Staff, and have some tie-in with the three departments, rather than to leave it hanging up there on a limb all off by itself. I do not think that would change anything materially, but it would clarify it, and make it plain that we are setting up something for the purposes for which we conceive it to be set up."

Admiral Sherman: "Well, sir, I would like to make a comment on the language as to the Central Intelligence Agency. At one time in the drafting we considered completely covering the Central Intelligence Agency in the manner that it should be covered by law."

Senator Tydings: "Admiral, my point is simply this: that under the wording as to the Central Intelligence Agency which

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begins on page 20 and ends at the top of page 22, it deals more or less with consolidation and not with the duties that devolve upon that office. It seems to me there is a void in the bill that ought to be eliminated."

Admiral Sherman: "Well, we considered the matter of trying to cover the Central Intelligence Agency adequately, and we found that that matter, in itself, was going to be a matter of legislation of considerable scope and importance."

Senator Tydings: "A separate bill?"

Admiral Sherman: "A separate bill. And after consultation with General Vandenberg, we felt it was better in this legislation only to show the relationship of the Central Intelligence Agency to the National Security Council, and then leave to separate legislation the task of a full and thorough development of the Central Intelligence Agency."

Senator Tydings: "Well, now, for the record, is it safe for this Committee to assume that during this session it is likely that a bill will come along dealing with the Central Intelligence Agency in the particulars we have under discussion?"

Admiral Sherman: "It is my understanding that that will take place."

The Chairman: "How about that, General Vandenberg?"

General Vandenberg: "The enabling act is prepared, but we do not want to submit that until we have reason for it."

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Later, General Vandenberg reviewed for the Senate committee the relationships which had been developed between the Director of Central Intelligence and the intelligence community under the 22 January 1946 Presidential directive:⁹¹

"In order to perform his prescribed functions, the Director of Central Intelligence must keep in close and intimate contact with the departmental intelligence agencies of

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the Government. To provide formal machinery for this purpose, the President's Directive established an Intelligence Advisory Board to advise the Director. The permanent members of this Board are the Directors of Intelligence of the State, War and Navy Departments and the Air Force. Provision is made, moreover, to invite the heads of other intelligence agencies to sit as members of the Advisory Board on all matters which would affect their agencies. In this manner, the Board serves to furnish the Director with the benefits of the knowledge, advice, experience, viewpoints and over-all requirements of the departments and their intelligence agencies."

The responsibility to support the departments and their intelligence agencies was a function of the DCI under the President's Directive of 22 January 1946 and was carried over into the CIA section of the President's proposal by providing that "the functions of the Director of Central Intelligence and the functions... of the Central Intelligence Group are transferred to the Director of Central Intelligence appointed under this act and to the Central Intelligence Agency respectively. However, in keeping with the House Committee's view⁹² "...that it is better legislative practice to spell out such (CIA's) duties in the interest of clarity and simplicity..." the CIA section was amended to specify these supporting functions. This provided the basis for the following colloquy on the House floor:⁹³

Rep. Kersten (R., Wis.): "It seems to me from what the gentleman has said that the Central Intelligence Agency is one of the very important parts of this entire set-up. I wish to ask the gentleman if there is a definite coordination provided for between that Agency and, say the Department of State? For I feel that certain information of the Agency would affect the activities of the entire system."

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Rep. Wadsworth (R., N. Y.): "The gentleman is correct. May I point out that under the provisions of the bill the Central Intelligence Agency in effect must cooperate with all the agencies of the Government, including the State Department. It is the gathering point of information that may come in from any department of the Government with respect to the foreign field, including the State Department, of course; including the War Department, through G-2; including the Navy Department, through ONI. That information is gathered into the central agency to be evaluated by Central Intelligence and then disseminated to those agencies of Government that may be interested in some portion of it."

DCI Relationship with NSC

The third and final consideration relating to structural relationships concerned the position of the Director with respect to the National Security Council. As background it is recalled that prior to submission of the proposal act to the Congress, General Vandenberg strongly opposed participation by either CIA or its Director in policy decisions but felt that there should be a provision providing for the Director's presence at the meeting of the Council. The 22 January 1946 Directive provided that the Director sit on the National Intelligence Authority as a non-voting member. However, the drafting team felt that the position of the Director as the intelligence advisor to the Council was inherent in the position itself, and that it would be improper to provide by law that the head of the Agency, under the Council, should sit on the Council.⁹⁴ While being present at the meeting of the Council did not necessarily constitute sitting "on" the Council, General Vandenberg's recommendation was rejected.

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However, during a hearing of the House Committee with Secretary Forrestal testifying the issue was reopened:⁹⁵

Rep. Boggs (D., La.): "The Director of the Central Intelligence Agency would work under the National Security Council."

Secretary Forrestal: "That is correct."

Rep. Boggs: "He is not a member of the National Security Council; he is an independent appointment of the President, but he works under, on this chart -- he is not a member of the Council, the heavy line drawn here, but he is more or less an executive secretary on intelligence matters for the Council."

Secretary Forrestal: "Well, it is obvious, Mr. Boggs, that the results of his work would be of essential importance to the Security Council."

Rep. Boggs: "I think so, and I agree with you, but the thought that I have in mind was that he should be a member of the Council himself. After all, he is dealing with all the information and the evaluation of that information, from wherever we can get it. It seems to me that he has knowledge and information of matters which the National Security Council would consider more information at hand and the evaluation of that information than any other member of that Council. He should be put on an equal basis."

Secretary Forrestal: "I think that there is always some limit to the effectiveness of any organization in proportion to the number of people that are on it. The services and the intelligence information of the Director of Intelligence would be available, and certainly no man who is either the Secretary of National Defense or the Chairman of the Security Council, would want to act or proceed without constant reference to the sources available to this Central Intelligence Director. But again, I would not try to specify it by law, so confident am I that the practical workings out of this organization would require his presence most of the time."

Rep. Boggs: "I can see -- I do not know that I can see -- I can visualize in my mind, even if this bill becomes a law, as presently set up, a great deal of room for confusion on

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intelligence matters. Here we have the Director of the Central Intelligence Agency, responsible to the National Security Council, and yet the Director is not a member of that Council, but he has to get all of his information down through the chair of the Secretary of National Defense, and all the other agencies of Government in addition to our national defense agencies, the Secretary of Agriculture, the Secretary of State, and so forth. I just cannot quite see how the man is going to carry out his functions there without a great deal of confusion, and really more opportunity to put the blame on somebody else than there is now."

Secretary Forrestal: "Well, if you have an organization, Mr. Boggs, in which men have to rely upon placing the blame, and this is particularly true of Government, if you once get that conception into their heads, you cannot run any organization, and it goes to the root, really, of this whole question. This thing will only work, and I have said from the beginning it would only work, if the components in it want it to work."

Rep. Boggs: "Right, I certainly agree with that..."

There was to be no further proposal to place the Director of Central Intelligence on the National Security Council as a member, although discussions such as that held between Mr. Boggs and Secretary Forrestal help to shed further light on the role of the DCI as the nation's chief intelligence advisor, as confirmed by subsequent Presidential action. ⁹⁶

Summary

The relationships which had existed for central intelligence within the intelligence community and to the policymakers under the National Intelligence Authority were for the most part ratified by the Congress in the National Security Act of 1947. The Director of Central

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Intelligence and the Central Intelligence Agency were placed under a National Security Council, whose membership was expanded to include the President.

As finally enacted, the "Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof..." was established "...under the National Security Council."⁹⁷ The responsibilities of the Director of Central Intelligence to the departments and their intelligence agencies under the 22 January 1946 Presidential Directive were made specific duties for CIA "under the direction of the National Security Council" as follows:

"(3) to correlate and evaluate intelligence relating to the national security, and provide for the dissemination of such intelligence within the Government using where appropriate existing agencies and facilities..."

"(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally."⁹⁸

The Congressional discussions leading to this enactment helped to publicly clarify the role of the DCI and the CIA and the nature of the supra-departmental tasks facing central intelligence.

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CHAPTER VI. FUNCTIONS

The basic functions of a national foreign intelligence organization were prescribed as early as 1941 in connection with the appointment of the Coordinator of Information; continued in 1942 in the case of OSS in a form tailored to the war effort; reviewed in 1944 within the Executive Branch as "Donovan's 10 Principles"; reaffirmed in 1945 in the plan of the Joint Chiefs' and the recommendation of the Secretaries of State, War and Navy; and in 1946 directed by the President as responsibilities of the Director of Central Intelligence.

In 1947 the basic functions of a national foreign intelligence organization were approved by the Congress of the United States in Section 102 of the National Security Act of 1947:

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council--

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: Provided further, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence:

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And provided further: That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

Thus, with slight modification and with a birthright back to 1941, the responsibilities of the Director of Central Intelligence⁹⁹ under the 22 January 1946 Presidential Directive were specified in the National Security Act of 1947 as duties for the CIA and imposed upon the DCI as the head of the Agency.

The approval of Section 102 involved more than placing a statutory capstone on six years of prior development within the Executive Branch. For a number of reasons already suggested,¹⁰⁰ Congress was to show deep interest in the functions of CIA.

Senate. It is recalled that the President's proposal sought to incorporate the 22 January 1946 Presidential Directive by referencing the functions of the DCI and CIG under it and transferring them to the DCI and the CIA under the proposed Act. This procedure caused some discomfiture within the Senate committee in connection with CIA's responsibilities to the departments and their intelligence agencies. Senator Tydings registered his concern over the lack of specificity on this issue and remarked that the CIA section as proposed by the President "deals more or less with

consolidation and not with the duties that devolve upon that office. It seem to me that there is a void in the bill that ought to be eliminated."¹⁰¹

While the Senate committee and the Senate were willing to await the early submission of enabling legislation for CIA to correct what was viewed by some as a deficiency, Senator Edward Robertson (R., Wyo.) commented when the measure reached the Senate floor, "It is necessary to go to Executive Order to find out what the functions and the powers of the Central Intelligence Agency are to be. Many...have taken the trouble to do so -- and I comment parenthetically that it should not be necessary to go to Executive Order to interpret a statute."¹⁰²

The functions of the CIA were eventually spelled out in the National Security Act of 1947 in line with a determination that "...it is better legislative practice to spell out such duties in the interests of clarity and simplicity."¹⁰³

House Committee. The interest of the House Committee on Expenditures Departments in the functions for the CIA is illustrated in Mr. Busbey's questioning of Secretary Forrestal:¹⁰⁴

Rep. Busbey (R., Ill.): "Mr. Secretary, this Central Intelligence Group, as I understand it under the bill, is merely for the purpose of gathering, disseminating, and evaluating information to the National Security Council, is that correct?"

Secretary Forrestal: "That is a general statement of their activity

Rep. Busbey: "I wonder if there is any foundation for the rumors that have come to me to the effect that through this Central Intelligence Agency, they are contemplating operational activities?"

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Secretary Forrestal: "I would not be able to go into the details of their operations, Mr. Busbey. The major part of what they do, their major function, as you say, is the collection and collation and evaluation of information from Army Intelligence, Navy Intelligence, the Treasury, Department of Commerce, and most other intelligence, really. Most intelligence work is not a mystical or mysterious character; it is simply the intelligent gathering of available data throughout this Government and throughout our consular services, from our military attaches. As to the nature and extent of any direct operational activities, I think I should rather have General Vandenberg respond to that question.

"I should like to add this, however, that in the democracy in which we live, and which we certainly intend to keep, intelligence activity is a difficult task. By the nature of its objectives it ought not to have publicity, and yet that is one of our difficult problems--just as, during the war, one of our greatest problems was the making available of the news that should be available, and yet denying to the enemy the things that would lend him not only comfort but substantial and effective help; and the same is true of intelligence. We do need a central intelligence agency, and we do need access--we do need to have some machinery for collecting accurate information from the rest of the world, because, as I said earlier, the speed, the tempo, and the fluidity of events in the world today very definitely require some central source here that is trying to evaluate those events for the various departments of Government that are charged with our security."

This line of questioning was continued by Rep. Brown, who participated in the hearings as a member of the Rules Committee:¹⁰⁵

Rep. Brown (R., Ohio): "...How far does this central intelligence agency go in its authority and scope?

"You mentioned that they combine and can use the agencies within the Treasury, I believe, within the Department of Commerce, and the like."

Secretary Forrestal: "I said they had available to them, and should have available, and should gather all information that bears upon our national security, from every agency of Government.

"Take, for example, the question of raw material."

Rep. Brown: "Do you limit it to national security?"

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Secretary Forrestal: "I might read from the paper that created the authority."

Mr. Brown: "As I understand, this original authority was created by directive of the President?"

Secretary Forrestal: "That is correct, sir."

Rep. Brown: "Rather than a law passed by the Congress of the United States.

"The provisions of this bill dealing with Central Intelligence would, I assume, supplant this Executive Order?"

Secretary Forrestal: "May I respond to your question thusly: The purpose of the Central Intelligence Authority was directed solely to the necessary intelligence activities that dealt only with our national security."

Rep. Brown: "I understand that.

"Please look on page 21, line 7, or line 13 of the bill; you will notice by statute you transfer the function of the National Intelligence Authority to the National Security Council and the Director of Central Intelligence, and the functions of the Central Intelligence group are transferred.

"However, the functions are set up nowhere that I have knowledge of in the statutory law of the land, and your statute refers back so some Federal Register of February 5, or some other date, and some directive issued by the President of the United States, under what I still think is questionable authority. Nobody can tell from that statute, from this bill, if enacted into law, what power or authority this fellow had."

Secretary Forrestal: "While it is not specified in this bill, Mr. Brown, the intent is, should this bill become law, to implement specifically, by statute, that part of it that deals with the reference to the Central Intelligence Authority."

Rep. Brown: "Do you not think it should be done all at once before you pass a thing like this? Do you not think this should be set out in the statute?"

"Intentions are fine things, but intentions make good paving blocks, too."

Secretary Forrestal: "Well, it could be done simultaneously. I

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would rather not try to have that bill incorporated as a part of this bill."

Rep. Brown: "Do you not think this bill should come first, then, and have an agency legalize and authorize the law and put it in here?"

Secretary Forrestal: "There is no reason why you could not have it a part of this bill, and I think General Vandenberg, as a matter of fact, is now preparing a statute which could either be incorporated in this bill or dealt with as a separate act.

"Either way would be quite all right, as far as I am concerned."

Rep. Brown followed up his questioning of Secretary Forrestal concerning the functions of the Agency with Admiral Sherman. After getting Admiral Sherman to admit that he believed the outline of our national security structure should be established by statute.¹⁰⁶

Admiral Sherman: "I think that this bill does it properly. As I said in my prepared statement, this bill represents a compromise between opposing views, and I believe it is the optimum settlement of the matter, for the time being... My understanding of the effect of this bill in that regard is that it would freeze the order specifically referred to, which is President Truman's letter of January 22, that it would freeze that letter and make it permanent until such time as the Congress passed an adequate organic law for the Central Intelligence Agency."

Later, during the same session, Admiral Sherman pointed out that:

"...it was not the Central Intelligence Group which wanted to defer their legislation until a later time; it was General Norstad and I who were charged with preparing a draft for this bill. We felt that if we attempted to get all the duties of the Central Intelligence Agency in here, then there would be a demand to put all the duties of the Navy, all the duties of each agency, in great detail, and we would wind up with a very bulky volume."

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Rep. Harness (R., Ind.) then asked if that was

"...the only reason given why you preferred to simply transfer the Security Agency under the Executive order rather than to write in the act, the functions of the Agency?"

Admiral Sherman replied:

"That was the only reason from my point of view, sir. I felt that that was rather a large subject by itself, and that it would unduly complicate this other legislation."

Rep. Harness concluded by observing:

"But at the same time you proposed later on to ask the Congress to enact a law that would do that very thing?"

Summary

The Presidential Directive of 22 January 1946 was entered into the Record in the Committee hearings¹⁰⁷ and the basic functions of the Director of Central Intelligence under that directive were described by General Vandenberg before both committees in the following terms:¹⁰⁸

"The Director of Central Intelligence is presently charged with the following basic functions:

1. The collection of foreign intelligence information of certain types - without interfering with or duplicating the normal collection activities of the military and naval intelligence services, or the Foreign Service of the State Department.
2. The evaluation, correlation and interpretation of the foreign information collected, in order to produce the strategic and national policy intelligence required by the President and other appropriate officials of the Government.
3. The dissemination of the national intelligence produced.
4. The performance of such services of common concern to the various intelligence agencies of the Government as can be more efficiently accomplished centrally.
5. Planning for the coordination of the intelligence

activities of the Government so as to secure the more effective accomplishment of the national intelligence objectives."

It was clear that the correlation, evaluation and dissemination of intelligence relating to national security was an inherent part of central intelligence and that these functions were widely recognized and supported by the Congress. Four of the five functions as seen by General Vandenberg are clearly recognizable in Section 102 as enacted.¹⁰⁹ The first, collection of foreign intelligence of certain types, was not to be specified in the Act but understood to be one of the services that the National Security Council could direct the Agency to perform.

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CHAPTER VII. COLLECTION

Background

Certain elements within the intelligence community had feared from the outset that a centralized organization would so dominate the intelligence field that it would encroach upon departmental collection, evaluation, and dissemination functions. In the interest of assuaging these fears, the Presidential Directive provided that "The existing intelligence agencies of your Departments (State, War, and Navy) shall continue to collect, evaluate, correlate and disseminate departmental intelligence."

Notwithstanding this qualification, however, a House report¹¹⁰ of the 79th Congress, apparently again reflecting the reservation of certain elements in the intelligence community, recommended that the Director of Central Intelligence "...should not undertake operations for the collection of intelligence."¹¹¹ Prior to the issuance of this House report, the National Intelligence Authority, in furtherance of its responsibility to insure "the most effective accomplishment of the intelligence mission relating to the National security," had directed that:

"...the Director of Central Intelligence is hereby directed to perform the following services of common concern, which this authority has determined can be more efficiently accomplished centrally: Conduct of all organized Federal espionage and counter-espionage operations outside the United States and its possessions for the collection of foreign intelligence information required for the national security..."

House Committee

Therefore, when this issue was again raised during the 80th

Congress, the Secretaries of State, War, and Navy constituted as the National Intelligence Authority, sent a letter to Clare Hoffman, Chairman, House Committee on Expenditures in the Executive Departments, which referred to the 8 July 1946 directive and denied charges appearing in the press that the CIG had usurped various departmental intelligence functions and had forced established organizations out of the field. Excerpts from that 26 June 1947 letter follow:

"It has long been felt by those who have successfully operated clandestine intelligence systems that such work must be centralized within one agency. As a corollary to this proposition, it has likewise been proven that a multitude of espionage agencies results in two shortcomings: first, agents tend to uncover each other or block each other's funds or similarly neutralize each other, being unaware of identical objectives; second, each agency tends to hoard its own special information or attempts to be the first to deliver a choice piece of information to higher authorities. This latter type of competition does not permit the overall evaluation of intelligence on a given subject, as each agency is competing for prestige...

"The Central Intelligence Group should be free to assume, under our direction, or the subsequent direction of a National Security Council, the performance, for the benefit of the intelligence agencies of the Government, of such services, of common concern, including the field of collection, as this Authority or a subsequent Council determines can be most efficiently performed centrally."

In keeping with the precedent of not publicizing espionage as an activity of the United States Government, almost all discussion relating to the clandestine collection function was deleted from the printed committee hearings. However, the day after Chairman Hoffman had received the 27 June letter from the National Intelligence Authority, the House Committee on Expenditures in the Executive Departments

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met in executive session to hear testimony on whether or not the responsibility to collect certain foreign intelligence should be assigned to the Central Intelligence Agency. 112

Rep. Wadsworth (R., N. Y.): "...in view of this paragraph concerning the existing intelligence agencies of your departments, which are G-2, ONI and the appropriate agency of the State Department, which paragraph reads:

'The existing intelligence agencies of your Departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.'

"Apparently the issue arises around the meaning and interpretation of that paragraph along with paragraph 'C' which directs the Central Intelligence to perform such service of common concern as can be more efficiently accomplished centrally."

General Hoyt S. Vandenberg: "...The Intelligence Advisory Board, which consists of the three departmental intelligence organizations, State, War, and Navy, in consultation with the Director of Central Intelligence, made an exhaustive study of the best way to centralize, both from the point of view of efficiency of operation and cost, certain phases of the national intelligence.

"They all felt, together with myself, who was Director at that time, that a very small portion, but a very important portion, of the collection of intelligence should be centralized in one place. Now, the discussion went on within the Intelligence Advisory Board as to where that place should be."

Rep. Brown: "...In other words, you proceeded under the theory that this Central Intelligence Agency was authorized to collect this information and not simply to evaluate it?"

General Vandenberg: "We went under the assumption that... that part that says that we should 'perform such other functions and duties as the President and the National Intelligence Authority may from time to time direct,' and 'recommend to the National Intelligence Authority the establishment of such over-all policies and objectives as will assure the most effective accomplishment of the National Intelligence mission' gave us that right."

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Rep. Brown: "In other words, if you decided you wanted to go into direct activities of any nature, almost, why, that could be done?"

General Vandenberg: "Within the Foreign Intelligence field, if it was agreed upon by all of those agencies concerned."

Rep. Brown: "And that you were not limited to evaluation?"

General Vandenberg: "That is right, sir."

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General Vandenberg: "...Now, the difficulty we ran into in the Intelligence Advisory Board was this: It is almost universally agreed that the collection of clandestine intelligence must be centralized some place; because if it is disseminated among several organizations without one head, the agents who are operating expose each other. We saw that ourselves during the war in the Balkans.

"The British have had their experience, and the Germans in their report of the war indicate that that was one of the causes of their failure. We believe that the Russian expose in Canada had something to do with the numerous agencies up there. Universally, among the heads of the intelligence organizations in the government, the belief is that clandestine intelligence should be centralized.

"Then the point came: Where should we centralize it? If we put it in G-2, that made an organization which had particular points of view and priorities responsible for collecting the clandestine intelligence for the State Department and the Navy Department, and that would immediately cause a furor, because neither State nor Navy could have assurance that the proper priority would be given to the collection of their intelligence.

"The same thing was true if we put it in State, and the same thing was true if we put it in the Navy Department."

Rep. Wadsworth: "And did the head of G-2 and the head of ONI agree to this proposal?"

General Vandenberg: "Yes sir."

Rep. Brown: "...one of the big questions in my mind is whether or not we should not set forth in the statute, as a law-making

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body is presumed to do, what the functions of an agency it creates may be."

General Vandenberg: "I would agree with that, except for this one point. Today we are tyros in this game of foreign intelligence. We are trying to overcome in two or three years sometimes hundreds of years of experience.

"People will tell you that we know all of the answers and this is the right way to do it. I do not believe that there is anybody in the United States today who can tell you that; and I would prefer to let this thing grow in the hands of people who are primarily interested in getting this intelligence."

Rep. Brown: "You can write these functions in the statute and you can change them?"

General Vandenberg: "I do not think anybody knows."

Rep. Brown: "We are supposed to say what an agency of this Government can do."

General Vandenberg: "If we had had the Central Intelligence Group 300 years ago, or 200 or 150 years ago, we could come in and tell you what, in our opinion, was our best advice on how those functions should be delineated. I do not think that we can do that today."

Rep. Brown: "You think we should delegate to a Security Council, then, the authority to fix functions and to change them as they may see fit, which might possibly endanger the rights and privileges of the people of the United States?"

General Vandenberg: "No, sir, I do not think there is anything in the bill, since it is all foreign intelligence, that can possibly affect any of the privileges of the people of the United States... My feeling is that the limitations, as transferred from the President's letter, are sufficient to protect the people of the United States, but that is my personal opinion, and that in the hands of the Security Council the collection of foreign intelligence can be properly administered and will be given enough of a broad policy in order to set this thing up, so that we will have, some day, real national intelligence. I can see no reason for limiting it at this time."

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Rep. McCormack (D., Mass.): "Do you think the CIG should do collection work?"

Mr. Allen W. Dulles: "Yes, I do. I would like to get into that point, and I realize it is a contentious point, and it is a difficult point, and there are arguments on both sides. There is a lot of misunderstanding about secret intelligence."

"In the first place, secret intelligence and clandestine intelligence is only one relatively minor segment of the whole intelligence picture. There are several branches of secret intelligence, and some one agency has to do that. I think it is impossible to continue with a series of agencies engaged in the work of secret intelligence. You are going to cross wires, and you are going to find that these various agents will become crossed. You will find that, because it is very delicate and difficult field which requires the greatest amount of coordination. I do not know where else it can be put..."

"I feel very strongly that there must be a central directing agency of that with the power to do the secret collecting, using such agencies as that Central Agency desires, including its own. That has been the experience of most other countries..."

"The argument has been raised that if you have both the functions of collection and analyses and reporting, that you are likely to put undue weight on the information you collect yourself as against the information that comes to you from other agencies. Well, that is a human failing. I think if you have a good man, that is not the case. Personally, I would not, myself, put a tremendous amount of weight on clandestine intelligence. It has got to be proved before it is any good."

Later in the same session Rear Admiral Thomas Inglis gave the committee three supporting reasons for centralizing certain responsibilities: economy, effectiveness and plausible denial.

Admiral Inglis: "...I hold the view that covert operations should be controlled centrally and divorced from the departments having intelligence agencies for the following reasons:

- (a) Central operation is more economical because it avoids duplication, reduces overhead, and assures that the needs of all departments requiring covert intelligence are equitably met.
- (b) Central operation is considered more effective because it can cover the entire field of covert intelligence ..

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a field which for its full exploitation must be world-wide and closely integrated, with no competing agents working at cross purposes.

- (c) Covert activities are occasionally exposed by foreign governments. It is desirable that no embarrassment, such as exposure may entail, should fall upon the State, War, or Navy Departments which must protect the diplomatic standing of their missions and attaches."

There is no record of any subsequent challenge to either the authority or the desirability of the Agency engaging in certain espionage and counter-espionage activities.

Summary

In connection with the 22 January 1946 Presidential Directive, it was determined that it was not in the interest of the United States to refer to clandestine collection (espionage) in public documents.¹¹³ Apparently following the precedent thus established, the House Committee did not specify the collection function in the legislation. Instead, the House Committee inserted language essentially identical to both the common concern and catch-all provision of the Presidential Directive:

"Sec. 102 (d) (4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

Thus, the authority and indeed the responsibility for certain intelligence collection was deferred to the general authorities and responsibilities of Section 102 (d) with the knowledge of the manner in which these general authorities and responsibilities had been implemented in the past and would be implemented in the future.

CHAPTER VIII. CIVILIAN STATUS OF DCI

The civilian status of the Director of Central Intelligence became a central issue in the Congress. Undoubtedly, the language of the Presidential proposal¹¹⁴ contributed to the doubts of members concerned with retaining civilian control over the armed forces: "...we have constantly kept a civilian in the positions of Secretary of War and Secretary of Navy, and this bill provides that the Secretary of Defense shall be a civilian. I think it is for the same reason exactly, (to have a civilian DCI) to safeguard and to make certain there is not to be any usurpation of power."¹¹⁵

An amendment requiring a civilian Director passed the House in line with "...a legitimate fear in this country lest we develop too much military control of an agency which has great powers and operates in secret..."¹¹⁶ While the requirement was eliminated in conference, the House conferees pointed out the compromise provision seeks "...to divorce the head of the agency from the armed services if a man in the service is appointed."¹¹⁷

Three months earlier General Vandenberg was succeeded as Director of Central Intelligence by Admiral Roscoe Hillenkoetter. The Washington Post, in a 3 May 1947 editorial, observed:

"...General Vandenberg's resignation points up a fundamental weakness in our intelligence set up which is carried over in the new Central Intelligence Authority (sic) envisioned under the armed forces merger bill. That is the weakness of permitting a military man to retain his active duty status while serving as

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Director of Central Intelligence. Inevitably this results in a tendency on part of the incumbents to regard the job as merely a stepping stone in an essentially military career. Hence, it invited the trading back and forth between the Army and Navy evidenced by the appointment of two admirals and one general in 16 months. What is needed is to develop the concept of long-term career service in this highly important job. We hope Congress will see to it that the merger bill is amended to establish a specific term of office¹¹⁸ and to require that the Director be in fact a civilian. This need not militate against Admiral Hillenkoetter if he is sincerely interested in an intelligence career, for he can relinquish his active Navy status and retain the Directorship as a civilian..."

Conceding that the position of DCI should be held by a civilian, it was also true that the nation did not have extended experience in the foreign intelligence field. The few men who had the experience "...have gained their experience in the Army and Navy, and are still in the service."¹¹⁹

The provision concerning the DCI in the Presidential draft sought to overcome the existing legal disability running against certain officers of the Armed Services from accepting a civil office.¹²⁰ The results of this legal disability would have required certain officers to vacate their commissions. Consequently, one of the prime objectives of the Presidential language in the proposed act was to overcome this legal disability and otherwise to provide benefits and protection to assure that such a career officer in the position of the DCI would have the requisite freedom from control by his parent service.

With the exception of requiring the advice and consent of the Senate to the appointment of the Director, the language pertaining to the

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Director of Central Intelligence approved by Congress did not substantially vary from the Presidential proposal. However, the result was to further amplify the importance of freedom from departmental influence and the other side of that coin, the non-political and non-policy nature of the position of the DCI and the Agency which he heads.

Senate

The only amendments proposed to the CIA section by the Senate Armed Services Committee related to the Director of Central Intelligence.¹²¹ The proposed language, "...with a Director of Central Intelligence, who shall be the head thereof, to be appointed by the President..." was amended to read, "...with a Director of Central Intelligence, who shall be the head thereof, to be appointed from the armed services or from civilian life by the President, by and with the advice and consent of the Senate."¹²²

The Senate Committee thus adopted language which substantially was the same language carried in the White House draft¹²³ as late as a month before the final proposal was submitted to the Congress. The Committee explained in its report:

"In view of the fact that certain officers of the armed services have had wide experience in handling the type of intelligence with which this agency will be largely concerned, the provision of the bill to permit the Director of Central Intelligence to be appointed from the armed services as well as from civilian life is most desirable. During the Agency's formative years, it is essential that its Director be technically the most experienced and capable obtainable, regardless of whether he is appointed from civilian or military life."¹²⁴

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Senator Robertson (R., Wyo.) cited the language relating to the Director of Central Intelligence in the President's proposal as evidence of the military control being established under the bill, thus creating a "military empire."

"... The bill really goes further than this; by its emphasis on provisions relating to a military director, it suggests that the Director should be a military officer. Originally, the bill required a military director; the modification to permit a civilian to serve as Director was inserted only after opposition to such an obviously improper requirement. The mere fact that the bill still permits a military officer to serve as Director is sufficient indication, to my way of thinking, that the drafters of the bill still expect the President to appoint a military officer to the Director's job."¹²⁵

On the last day of Senate debate on the bill, Senator Robertson concluded:

"... With respect to the Central Intelligence Agency, I shall leave to other critics of the bill the problem of writing into law a proper set of functions to replace the bland reference to present duties under executive order. As a minimum step in the protection of civil liberties it should be made mandatory, however, that the Director of Central Intelligence should at all times be a civilian who can make such a position a career."¹²⁶

However, these remarks by Senator Robertson were only a prelude to more extensive discussion on the floor of the House some ten days later, which culminated in an amendment requiring that the Director be a civilian.

House Committee

The House Committee on Expenditures in the Executive Departments vigorously explored the question in executive session:¹²⁷

General Vandenberg (replying to a question as to whether the Director of Central Intelligence should be appointed from

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military or civilian life): "...It makes not one bit of difference, except for this fact: Initially, the military are very loath to trust their top secret information to someone over whom we do not have the ability to penalize by court action if they divulge some of this. We do not have an official secret act with teeth in it, but we do have within the Army and the Navy the ability to court martial anybody.

"...Now, if we can put a military person in there initially and let him organize this thing and let the flow of information get fully established, after that period it makes no difference whether it is civilian or military, and the information will continue to flow."

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Rep. Manasco (commenting on General Vandenberg's recommendations): "...would you object to an amendment to the bill providing that, say, in the next 8 or 10 years the person at the head of the CIG must be a civilian, and that will give you an opportunity then to take the civilian and train him like Mr. Hoover was trained and make a career man of him? A change every four years weakens our intelligence."

General Vandenberg: "I would prefer not to see it written in. It is now left up to the President and Congress under this bill to pick the man, and if he happens to be a military man, I think they ought to be free to put him in."

The Chairman: "Do you not realize that there is a fear among a great number of our people that there are too many military men getting in? For instance, Marshall is Secretary of State and so on down, and everywhere we look, we see an Admiral or former military man."

General Vandenberg: "Yes, sir."

The Chairman: "Would not the law work better and be more acceptable if the fears, justified or not, on the part of the people were sort of allayed?"

General Vandenberg: "I anticipate, Mr. Chairman, that after Admiral Hillenkoetter, who the Secretary of War has stated to a Senate Committee intends to make this a career, that after him, I would anticipate that probably the next man to be appointed would be a civilian; I would just guess that."

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Rep. Judd (reading from a letter from a person whom the Congressman described as a Governor of a state who was formerly with OSS): "Let me read the second part of this. This gentleman says most emphatically:

"The Director should be a civilian. The experience of the last few months shows the complete futility of placing other than a civilian in charge of the Central Intelligence Agency. A man from the services will be subjected to pressure for his own particular branch. Unless he is a weakling, he will ardently desire to leave Intelligence. He will never wish to make a career of the securing of intelligence.

"In the past 15 months there have been three heads to the Central Intelligence Agency. Under the set-up in the bill as now it will serve as a stop-gap position for officers being moved up to other assignments. Intelligence today is not primarily military. It is political and technological, as essential in peace as in war. No career officer is likely to look on it this way."

"I would like to have your comment on that. He is the man who has been immediately in charge of the prototype for the first experimental efforts in this field."

General Vandenberg: "I feel that up to this time, the change of directors at Central Intelligence has been a healthy thing."

Rep. Judd: "Three times in 15 months?"

General Vandenberg: "I think that is right. Now, we have gotten the diversified ideas of Navy, Army and State, and we have had different people viewing this, and it has been shifted and tried with new points of view, which has been very healthy in its formative stage."

Rep. Judd: "You would not recommend that as a regular policy?"

General Vandenberg: "If that continued, it would be very detrimental. I pointed that out, I believe, when we appeared before the Senate Committee. At that time, however, Mr. Forrestal, Secretary of the Navy, stated that Admiral Hillenkoetter intended to make this a career. From that viewpoint, I think that he is a very fine choice to head this organization, and I agree with what the gentleman said in the letter, if you will take it from this time on."

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Mr. Allen W. Dulles (commenting on the need to construct the centralized organization on a permanent basis): "...I feel that the important thing if we are going to build up an Intelligence Agency is permanence. We have got to make sure that the fellow that goes in there as head of the Central Intelligence Agency is going to stick to it. This is a job not of one year but of five or ten or fifteen years. I think J. Edgar Hoover's prestige and the prestige of his organization is due to the fact that he has been there for twenty-five-odd years. That is true, I think, with the British Intelligence Service, too. The fellow that has been there, I think has been there for twenty-odd years. It takes time.

"Now, I do not think, and I believe therefore that the person who acts as head of that agency should act in a civilian capacity. I do not say that he should be a civilian, I mean he should become a civilian, and make that his life work and not look forward to promotion in the Army or the Navy or the Air Corps.

"It might well be that the best person to head up that agency might have had military training up to the time he takes that job, but when he takes that job it is like going into a monastery. He has got to devote his life to that, and to nothing else."

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Mr. Dulles (commenting on the curtailment of benefits should the Director of Central Intelligence return to his parent service): "I do not think I would put any prohibition on that. I think it is a pity if the fellow that does that feels after two or three years he can go back and be an admiral or vice admiral or the other. That is unsettling. The President has got to be satisfied that when a fellow goes into this job that he is going to make that his life work and perform his duties to the satisfaction of the Authority under which he works."

Rep. Manasco: I was thinking now, since we have no civilians in this type of work, we should have for the next 10 years a military man as head of it, if he continues to serve from now on and does not go back to the Army."

Mr. Dulles: "I would not affect his retirement, but I would make him operate as a civilian while he is there. Later he may want to resign if there are provisions for his going back in the service, but I am skeptical about that because I am afraid if you open that door too wide, you are going to defeat the essential purpose we are trying for."

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Rep. McCormack (D., Mass.): "I do not think there is too much disagreement, except at the outset, Mr. Vandenberg felt that there might be a military man at the outset."

Mr. Dulles: "I have the highest regard for General Vandenberg and the others, as far as individuals are concerned. They are men of a very high type."

Rep. McCormack: "What would be your opinion at the outset?"

Mr. Dulles: "I think that you have got to start now, if you are going to develop this thing, and develop it with the utmost seriousness; and the fellow that takes it on, who is appointed now, I think ought to make it a life work."

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Admiral Thomas Inglis (presenting assets that military men would carry over into the position of Director of Central Intelligence): "Civilian vs. military appointee as Director of Central Intelligence: The Director of Central Intelligence should be the man best qualified for the job, whether he be civilian or military. This is wisely provided for in the bill under consideration. I have heard many arguments on the merits of a civilian director, and I have no objection to the appointment of a competent civilian to the post, but there are also advantages to the appointment of a military man to the post."

"In the first place his loyalty would be unquestioned, for any conceivable military appointee would be a man who had served his country faithfully for a long period of years under close observation. There can be no question but that absolute loyalty to the Government of United States is the first requirement of a Director of Central Intelligence."

"Secondly, a military appointee would be politically non-partisan. His complete independence from political ties or commitments would give assurance that the conclusions of the Central Intelligence Agency will be entirely objective."

"Finally, a military appointee would be readily available, whereas the best qualified civilian might hesitate to accept a government post requiring almost certain financial sacrifices, or the abandonment of an established civilian profession. It is not recommended, however, that an officer, no matter how well qualified, be ordered unwillingly to the position of Director of Central Intelligence. A Director, whether civilian or military, should assume the post voluntarily with the intention of devoting to intelligence the rest of his useful career."

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"I have on occasion heard the objection that a military man would be partial, that he would attach too much weight to reports from military sources. It may be answered that a military officer will be more sharply aware of military developments which impose a threat to our security. It may be similarly argued that a civilian would over estimate reports from civilian sources. Impartiality is not an attribute of either the civilian or military mind alone. It is a quality to be sought in a Director regardless of his past training or career. The practice of other democratic nations has almost invariably been to assign a military director to foreign intelligence and to make him responsible either to his country's General Staff or to its civil Premier. That is true, for instance, in Great Britain, France, Holland, Belgium, Switzerland, and the Scandinavian States.

"There has been a lot of confusion in the statements that have been made about that, and very often when they say that the Director of the intelligence service of some country is a civilian, they are referring to the counterpart of FBI, rather than to the counterpart of the Director of Central Intelligence here."

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Rep. Judd (following up in detail with Admiral Inglis on distinction between "retiring" and "resigning" in connection with the employment of a military officer as Director of Central Intelligence):

"Let me ask you one more question. It is on this question of whether the Director should be a civilian or a military man.

"Do you think that if the best man for the job is a man from the Army and Navy, and he is appointed as director of Central Intelligence, that he should resign so that he gives his whole undivided attention without any possibility of being influenced either by his former associations or present associations or his own hankering perhaps to get back into the service where he spent most of his life?"

Admiral Inglis: "Yes, sir; do you mean resign or retire?"

Rep. Judd: "Either one. I think in any case, perhaps I should qualify the question, that he should resign or retire with full protection of his personal rights."

Admiral Inglis: "Yes, sir, that would be retirement."

Rep. Judd: "Yes."

Admiral Inglis: "He should certainly enter that job with the idea that he has burned his bridges behind him professionally, that he

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has given up any ambitions of becoming Commander in Chief of the Pacific Fleet, and so forth, and he is in the psychological frame of mind that he will devote the rest of his life, assuming his service continues to be desired, to the national intelligence authority, to that particular job. "

Rep. Judd: "And as a civilian, after he assumes it. "

Admiral Inglis: "To all intents and purposes. If Congress believes that that is not sufficient, if they believe that however psychologically he might be prepared then for that, still two or three years later he might get a little disgusted with the way things are going, and he might have a return of a hankering to get back into the Navy, if they believe that, they would have to have some protection against that eventuality, then I would suggest that Congress write into the law that the individual must retire, not resign. . .

"I want to make that distinction between retiring and resigning. Once he has retired, he can never entertain any ambitions from then on of ever getting back into the swing. "

Rep. Judd: "Do you feel that if the individual's personal rights are properly protected, that it would be better, he would be able to approach the thing with a greater detachment, if, as one witness here this morning testified, he ought to approach it as a man going into a monastery, 'This is the place where I can make the greatest contribution to my country in my remaining days.' "

Admiral Inglis: "I have precisely that same philosophy about it. "

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House Floor

The language pertaining to the position of the Director of Central Intelligence reported out by the House Committee was the language which was eventually adopted by both Houses.¹²⁸ Rep. Harness explained that the committee had taken special pains in drafting language pertaining to the Director of Central Intelligence to assure on the one hand that the nation would not be deprived of the services of a military officer in the

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position and on the other, that any officer serving in that position would be free from undue departmental influence.

Rep. Harness: "There has been insistence that the director of this agency be a civilian. I believe we should eventually place such a restriction upon the authority we are proposing to create here, although I say frankly that I am not convinced of the wisdom of such a restriction at the outset.

"Prolonged hearings and executive sessions of the committee behind closed doors lead me to wonder if we have any single career civilian available for this job as a few men who might be drafted from the services for it. Understand, please, that I want to protect this very influential post against the undue military influence which might make of this agency an American Gestapo. If we can find a well qualified civilian career man able and willing to handle this post, I would readily accede to this limitation. Let me repeat, however, that this Nation is without extended experience in this field; and that we actually have comparatively few men qualified by experience to head this agency. Most of these few qualified men have gained their experience in the Army and Navy, and are still in service. Before we deny ourselves of the service such military men may be able to render the country in this capacity, let us be very sure that there are civilian candidates qualified by training and experience available to serve us equally well, or better.

"Again let me say that I have no objection to a restriction in this measure which will require a civilian head in this agency. I merely want reasonable assurance that such a restriction will not deny us of the services now of the best available man if this plan becomes operative. It wrote into the bill provisions that should allay any of their suspicions or fears as to what might happen if this bill is enacted into law. I feel their apprehensions are without foundation."¹²⁹

When the proposition was opened to amendments, Rep. Judd, explaining that he had lost out in committee by a small majority, offered a floor amendment requiring that a military officer appointed as Director of Central Intelligence must either resign or be retired. The colloquy which this amendment sparked and which eventually led to the adoption

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of a substitute amendment by Rep. Brown requiring that the Director of Central Intelligence be appointed from civilian life underscores the concern with the permanency of the position of the Director of Central Intelligence and its freedom from departmental influences:

Rep. Judd: "Much of the testimony before us from people with a great deal of experience in this field was to the effect that the director should be a civilian. On the other hand, the committee did not think it ought to exclude a man who is now or at some later time may be in the military service from being appointed as director of the Central Intelligence Agency if he should be the best man for the job. It was agreed that he should not have the job unless he first becomes a civilian so that he will have no divided loyalties, will not be standing with one foot in the civilian trough and one foot in the military trough.

"Under the present language of this bill which the committee has drawn up, it was trying to accomplish the same thing I am after; but I do not believe it goes far enough. On page 8, line 10 is the following:

'If a commissioned officer of the armed services is appointed as director then-

(A) in the performance of his duties as director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the department of the Army, the department of the Navy, the department of the Air Force, or the armed services or any component thereof.'

"Now that sounds all right, but all of us, being human beings, surely know that if a one-star general is Director of Intelligence, and a two-star general or a three-star general talks to him, it is wholly unrealistic to imagine that they will not have an influence over him, despite the law.

"The man who had charge of our secret intelligence in Germany during the war was a civilian, Mr. Allen Dulles. He did such an extraordinary job that he was in contact with the top men in Hitler's secret service. Hitler had to execute his top five men because they were double-crossing him and playing ball with our people. Mr. Dulles told us that the man that takes this job ought to go into it as a man who goes into a monastery. He ought to take it as J. Edgar Hoover has taken the FBI job- make it his life's work. He certainly ought to be cut completely loose from any ties or responsibilities or connections with any other

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branch of the Government - civil or military - except the President and the National Security Council.

"All this amendment does is to provide that if a commissioned officer of the armed services is nominated by the President and confirmed by the Senate as Director of Intelligence, then he shall be ineligible to accept such appointment and take office until he has either resigned his commission or has been retired. The amendment provides further that he can at his own request be retired in order to accept this appointment, but his retirement rights are protected so that when he is through as Director of Intelligence he will have the same perquisites and retirement benefits as does a major general or rear admiral, upper half."

Rep. Harness: "Does the gentleman think it makes any difference whether he is retired or whether he has not retired?"

Rep. Judd: "Yes, I do."

Rep. Harness: "His sympathies and his heart will be with whatever branch of the service he was connected with."

Rep. Judd: "Certainly, his heart will always be with that branch, but his organic connection with it will be broken. In no sense will he be under its control or influence. Under the bill as it is written now he is always tempted to regard himself as what he still is, an officer of the armed forces. When he gets through as Director of Intelligence, or if he does not like the work, or does not do too good a job and is let out, well, never mind, he can always go back to active military service. To do that, he has to keep his bridges intact, his military fences in good repair. That is, his mind may not be single because his interest are divided. We do not want that.

"Under the amendment he will still have his retirement rights; his family will be protected, and yet he is retired and completely separated from the military service, free from any possible influence so that he does not need to consider what might happen if the time should come that he wanted or needed to go back into the military service."

Rep. Harness: "...the bill itself says: 'In the performance of his duties as Director he shall be subject to no supervision, control, restriction, or prohibition, military or otherwise.'"

Rep. Judd: "That is correct."

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Rep. Harness: "Now, how much stronger can you make it? The only way you can change it is to say, 'You are going to have a civilian.'"

Rep. Judd: "The only way to make it stronger is to have the man resign or retire. I do not want to make him resign and lose the benefits accumulated during his military life. I want him to retire so he can go, as it were, into a monastery; but at the same time to preserve what he has earned as an officer in the armed services so he and his family have that security. It seems to me that this is the middle ground between the two extremes. It will give us civilian-directed intelligence, and at the same time will protect any commissioned officer, if one is appointed because he is thought to be the best man for the job. I hope the Committee will support the amendment."

Rep. Manasco (rising in opposition to the amendment): "...this section on central intelligence was given more study by our subcommittee and by the full committee than any other section of the bill. It was a most difficult section to write. All of us had the same objective in view, yet we had different ideas on it. I think personally that the compromise we reached adequately protects the position. Eventually I certainly trust that the head of this intelligence agency will be a civilian who is trained in the agency. It takes years to train that type of man..."

"We did our best to work out language here that would protect that position and keep from building up a so-called military hierarchy. A bill will be introduced soon after this legislation becomes law that will be referred to the Committee on Armed Services, where more study can be given to this most important subject. I sincerely trust that the amendment will be voted down."

Rep. Hoffman: "I note the gentleman's statement that the subcommittee did its best. Yes, we did our best, but we had a great deal of doubt when we finished whether we were right or not. Does the gentleman recall that?"

Rep. Manasco: "We did, and still have."

Rep. Hoffman: "We are not seeking to impose our judgment on the Members of the House."

Rep. Manasco: "That is right. I am just trying to show that we were all honest in our efforts to accomplish the same objective."

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Rep. Holifield: "If the Members read this section carefully they will see that we did everything possible to divorce any military person from this position without taking away from him his perquisites, emoluments, pension expectations, and so forth, and also the rights of his family."

Rep. Busbey: "Mr. Chairman, I trust the committee will give the amendment offered by the gentleman from Minnesota (Rep. Judd) very careful consideration, because I think it is extremely important. There was considerable discussion in the committee, and by a very, very narrow vote it was decided not to include the amendment in the bill as reported by the committee."

"I call the attention of the committee to one thing that I believe the gentleman from Minnesota failed to emphasize due to the fact that he did not have enough time. This agency has been running less than a year and a half. We have had three directors of the Central Intelligence Agency in that time. No one is criticizing Admiral Hillenkoetter, the present director of the agency, but there is nothing in the world to prevent him from being removed next week or next month and replaced with someone from the War Department or the Navy Department. The main point in the amendment offered by the gentleman from Minnesota is permanency and the effort to work toward a civilian head who is not influenced by any department of our Military Establishments."

"It is true that you can refer to the language of the bill where it states he is relieved from this and he is relieved from that, but you cannot write into legislation that human element which enters into the Military Establishment of our country of a subordinate officer fearing that some day he might come under the direct command of a superior officer somewhere along the line..."

"The committee as a whole was agreed that it would be fine to have a civilian head of the Central Intelligence Agency. But they did not want to include (sic) a qualified military or naval man from occupying such a position. The amendment offered by the gentleman from Minnesota corrects this situation, and I hope the Committee will adopt it."

Rep. Hardy (D., Va.): "Under the present language of the bill, assuming that the admiral now in charge continues in his present position, he would still be in the Navy, would he not?"

Rep. Busbey: "He would absolutely be in the Navy, and he could be transferred at any time."

Rep. Hardy: "That is my point. He certainly could be transferred, and he could work it out with the Navy Department and get any other assignment that he wants."

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Rep. Busbey: "Absolutely. He is still a naval officer."

Rep. Holifield: "I know the gentleman wants to be fair. Section (A), page 8, line 12, continuing to line 19, and then in section (B), expressly states that no superior officer of any of these departments shall have any control over the gentleman once he is appointed by and with the consent of the other body. He could not be shifted or given a tour of duty. There is absolutely no control over him. The gentleman knows that that language is in the act."

Rep. Busbey: "I am sorry, but the gentleman, I believe, did not understand my reference to human nature when it comes to military officers."

Rep. McCormack: "...I have a few observations to make on this very important question. I want no member to underestimate the importance of this. Whatever action the Committee of the Whole takes will be most agreeable to me because if we were not confronted with a very practical situation, in the subcommittee and in the full committee, I would have voted to provide for the appointment only of a civilian. I would have taken that action at the outset. But we are confronted with a very practical situation where the present director is an officer in the United States Navy with the rank of read admiral..."

"It seems to me if we are going to keep any language in here, the language contained in the bill is preferable to that proposed by the gentleman from Minnesota, Mr. Judd. I agree that whoever is appointed should be permanent. But what is permanency, unless it is appointment for life, with removal as provided for in the case of judges? We cannot give any man any assurance of permanency as far as an administrative position is concerned. The best we can do is as in the case of Mr. J. Edgar Hoover: A man by his personality, a man who impresses himself so much upon his fellowmen that permanency accrues by reason of the character of service that he renders. But J. Edgar Hoover has no tenure for life. He has earned it because of his unusual capacity."

Rep. Brown: "Mr. Chairman, I offer a substitute amendment which I have sent to the desk. (Substitute amendment follows:)"

'On page 8, strike out lines 5 to 52, both inclusive; on page 9, strike out lines 1 through 18, both inclusive, and insert in lieu thereof the following: "head thereof. The Director shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$14,000 a year." '

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"Mr. Chairman, this amendment is a simplifying amendment. This amendment is offered for the purpose of settling the differences between the members of my committee, the Committee on Expenditures in the Executive Departments. It simply eliminates any quarrel or discussion about just how we take care of the Director of the Central Intelligence Agency if he should be a commissioned officer by providing very simply that the Director shall be a civilian. Then as a result you can strike out all of subsection (b) and on down to line 18 on page 9."

Rep. Judd: "I may say to the gentleman from Ohio and the Committee that I myself prefer his amendment and have from the beginning. I have one exactly like it which I intended to offer if the one I have offered were to be defeated. In it I was trying to go halfway between requiring that the man to be appointed be wholly a civilian, and giving a chance for men now in the military service to take the job as civilians, but without losing their retirement rights."

Rep. Brown: "I remind the gentleman from Minnesota that at times one comes to the place where one has to go all the way, where one cannot go halfway."

"In my mind the people are afraid of just one thing in connection with this bill and in connection with many other matters that have come before this Congress in recent months and recent years, and that is they are afraid of a military government, some sort of a super-dictatorship which might arise in this country. They are afraid, in this particular instance, over the possibility that there might be some sort of Gestapo set up in this country."

"I will agree and I will admit to you very frankly that it is entirely possible that you might have a military officer who would like to do that; but I know one thing, that if you require a civilian to be the head of this agency then you will not have any danger within the agency of military influence or military dictatorship. I do not believe the present occupant of that office would ever abuse it; I have the highest confidence in him, but I do not know who may succeed him. We have had three different military officers in charge of this central intelligence group or agency in the last 15 months, and we might have more. I say to you that we need a civilian of the type of J. Edgar Hoover in charge of an agency like this, and the appointment of a civilian would at least be a partial guaranty to the people of the United States that this agency is not going to be usurped by any branch of the armed services at any time..."

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"A resigned military officer is no longer under the control or direction of the military branch. A retired military officer is subject to recall in time of emergency, still has to take certain orders and instructions from the military branch of the Government. The gentleman from Minnesota (Mr. Judd) in his provision to permit a military officer to hold the post, set up certain safeguards. My amendment goes the whole way."130

Conference Committee

Congressman Judd's amendment as amended by the substitute offered by Congressman Brown, requiring that the Director be a civilian when appointed, was adopted by the House. However, the committee of conference on the disagreeing votes of the two Houses on S. 758 recommended on 24 July 1947 the identical language which had been reported out by the House Committee on Expenditures in the Executive Departments:

"Sec. 102. (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof. The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services or from among individuals in civilian life. The Director shall receive compensation at the rate of \$14,000 a year.

(b) (1) If a commissioned officer of the armed services is appointed as Director then--

(A) in the performance of his duties as Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

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(2) Except as provided in paragraph (1), the appointment to the office of Director of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving in the office of Director, receive the military pay and allowances (active or retired, as the case may be) payable to a commissioned officer of his grade and length of service and shall be paid, from any funds available to defray the expenses of the Agency, annual compensation at a rate equal to the amount by which \$14,000 exceeds the amount of his annual military pay and allowances."¹³¹

On the 25th of July, 1947, Chairman Hoffman, in recommending that the House agree to the Conference Report,¹³² explained:

"You will recall that when the House passed on this legislation it amended the bill H.R. 4214, which the committee reported, with reference to the Central Intelligence Agency. The committee had written into the bill a provision that the head of that agency might be a civilian or a man from the armed services. The House amended the bill to provide that he shall be a civilian. During the debate the gentleman from Minnesota (Mr. Judd) offered an amendment which provided that if a man from the armed services was appointed he should be required to relinquish his rank and his authority in the Army...

"...when we went into conference, the conferees for the other body flatly refused to accept that amendment. They had made certain concessions to which your attention will be called later on, but on that one they stood pat. They refused to accept the House amendment to the committee bill so your conferees compromised by accepting the language of the bill, 4214, as reported by your committee to the House, thus discarding the amendment written into the bill by the House which would have required that the head of that agency be a civilian. My own choice, and I think the choice of six of the seven members of the House subcommittee who were conferees, was that the head of that agency should be a civilian, but we could not get it, so we went along with that compromise. It seeks to divorce the head of the agency from the armed services if a man in the service is appointed."

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Chairman Hoffman also went on to point out that the appointment of the Director of Central Intelligence was one of the "three more important points" (in the National Security Act of 1947) as it went to conference.

Congressman McCormack, a minority member of the conference committee, then took the floor to further explain:

"My friend the gentleman from Michigan has referred to the Director of Central Intelligence, and I think I might advise the House that that was the last question that we passed upon in conference. The Senate accepted the House provision of the bill as reported out of the House committee.

"You will remember when the bill was on the floor we frankly advised the Committee of the Whole at that time that the House Committee on Expenditures in the Executive Departments was strongly inclined toward, if not favorable to, a civilian director, but in view of the immediate situation that confronted us we put in the provision that in case a military man, a career officer of the Army or the Navy, was appointed that he would have to occupy what would be, in effect, a civilian position. We tried to protect him so that he would be free from a dual influence. I recognize, if one were to argue or say it did not completely eliminate a dual influence, that I could not challenge that statement. But we did the best we could from a human angle. We felt, since enabling legislation was going to come in later from another standing committee of the House--and we know that; we were advised and saw a copy of the proposed bill--that that question, with the other questions that would arise in connection with this Central Intelligence Agency, should be left to the standing committee, and that our committee should try to meet the immediate problem."133

Summary

The language in the National Security Act of 1947 pertaining to the position of the Director of Central Intelligence was a compromise of viewpoints. Sub-section 102 (a) permitted the President full discretion in the exercise of his appointment power over the position and provided

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an opportunity for Congressional impact on the position through the Senate confirmation proceedings. Subsection 102 (b) assured, in so far as possible, that any commissioned officer of the armed forces appointed to the position would be free from outside control. The deliberations leading to the enactment of these provisions made further contributions to the understanding of the position of the Director of Central Intelligence and the agency he would head by underscoring the non-political and non-policy nature of the tasks to be faced and the freedom from departmental influence that would be needed to assure their accomplishment.

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CHAPTER IX. INTERNAL SECURITY

As early as 1944, a statement of principles formulated for the President maintained:

"That such a Service (Permanent United States Foreign Intelligence Service) should not operate clandestine intelligence within the United States.

"That it should have no policy functions and should not be identified with any law-enforcing agency either at home or abroad."¹³⁴

The Presidential Directive of 22 January 1946 reinforced and implemented these principles by providing that:

"4. No police, law enforcement or internal security functions shall be exercised under this directive," and

"9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions, except as provided by law and Presidential directives."

Thus, the issue of internal security had received attention from the outset, and a clear and complete divorce between internal security functions and foreign intelligence functions had been explicitly implemented.

Testifying before the Senate Armed Services Committee and House Committee on Expenditures in the Executive Departments, General Vandenberg pointed out that the President's directive:

"...includes an express provision that no police, law enforcement, or internal security functions shall be exercised. These provisions are important, for they draw the lines very sharply between the CIG and the FBI. In addition, the prohibition against police powers or internal security functions will assure that the Central Intelligence Group can never become a Gestapo or security police."¹³⁵

It is recalled, however, that the CIA section of the Presidential draft of the National Security Act of 1947 relied upon the legislative technique of establishing the functions of the DCI and CIA by reference to the 22 January 1946 Presidential Directive. Consequently, the specific language of proscription of the Presidential Directive did not appear in the CIA section. This lack of specificity together with the overall concern with the general subject of internal security led the House Committee to insert a provision in the Act "...prohibiting the Agency from having the power of subpoena and from exercising internal police powers, provisions not included in the original bill nor in S. 758."¹³⁶

House Committee Executive Session

The House Committee considered the issue of internal security from two different aspects. The first related to simply prohibiting the Agency from engaging in internal security functions. The second concern related to the Agency's relationship with the Federal Bureau of Investigation in the interest of assuring the integrity of "domestic information" in the files of the Bureau. The issue of internal security from both of these aspects was developed before the House Committee as brought out in the following colloquies during executive session:

General Vandenberg (in replying to a question as to whether the Central Intelligence Group operated in foreign or domestic fields): "The National Intelligence Authority and the Central Intelligence Group have nothing whatsoever to do with anything domestic; so whenever we talk about the Central Intelligence Group or the NIA, it always means foreign intelligence, because we have nothing to do with domestic intelligence."

Rep. Holifield: "That was my understanding, and I wanted it confirmed." 137

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General Vandenberg (later in commenting upon specific prescription language): "I very strongly advocate that it have no police, subpoena, law enforcement powers or internal-security functions." 138

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General Vandenberg (in replying to a question as to whether the Central Intelligence Agency might endanger the rights and privileges of the people of the United States): "No, sir; I do not think there is anything in the bill, since it is all foreign intelligence, that can possibly affect any of the privileges of the people of the United States."

Rep. Brown: "There are a lot of things that might affect the privileges and rights of the people of the United States that are foreign, you know." 139

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Rep. Hale Boggs (D., La.) (in obtaining Mr. Dulles' opinion): "As a private citizen, sir, and with your experience in this field, do you have any suggestions or do you think there is a necessity of putting in additional safeguards on this Central Intelligence Agency to protect us, as citizens of the United States, from what this thing might possibly be or develop into?"

Mr. Dulles: "I do not really believe so. You mean having a Gestapo established here in the United States?"

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Rep. Boggs: "Will you clarify that question? May I just add this? Under this Act the authorities and functions of the Central Intelligence Agency would be based entirely upon an Executive Order issued by the President which could be changed, amended or revoked or anything else at any time.

"Now, the real question comes down to whether or not we should write into this Act the limitations and restrictions or define the functions and the activities in which they should engage, rather than depend upon a rather nebulous thing called an Executive Order, which is here today, but may be gone in three minutes, if the President decides to sign some other paper."

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Mr. Dulles: "I would prefer to see the Congress, not in too much detail, however, define the nature and functions of the Central Intelligence Agency."¹⁴⁰

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Rep. Wilson: "May I ask a question?"

"With the provision in the bill that the activities of the Central Intelligence Bureau are confined out of the limits of the continental United States and in foreign fields, do you think that that would tend to confine their activities? Now could they raise a Gestapo in this country with that?"

Mr. Dulles: "I do not think there is any real danger of that. They would have to exercise certain functions in the United States. They would have their headquarters in the United States."

Rep. Wilson: "But their activities would not be here, would they?"

Mr. Dulles: "We have lived along with the F.B.I. pretty well, and I do not think it is a Gestapo; and if the F.B.I. has not become a Gestapo, it seems to me that there is extremely little likelihood of any danger here. The field is different. They have no police powers, and they should have no police powers. They cannot put their hands on a single individual."

Rep. Wilson: "My understanding is that this bill takes that right away from them, any police power or anything else within the confines of this country. Their operations are foreign, except to disseminate information, of course."

Mr. Dulles: "They cannot exercise police powers."

Rep. Wilson: "It is a secret situation. Let us not try to rule anybody."¹⁴¹

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Rep. Busbey (in asking certain questions relating to the FBI and the CIA): "I have one other point. They do not operate, as brought out, in the United States. For instance, here on a Saturday some foreign agent takes a plane out of Paris for LaGuardia Field. He lands there on Saturday. Well, any

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agent of that kind has to come under the F.B.I. in this country. They drop him when he leaves France, and I do not think the present set-up is adequate to handle the situation. Then they follow him here in the United States for whatever period of time he has here, and then he probably would go to Mexico. Well, the F.B.I. drops him at the border and some other department of Central Intelligence picks him up down there in Mexico."

Mr. Dulles: "On the second point, I believe thoroughly there must be a close coordination between the new agency and the F.B.I., and I think that that has been working pretty well as far as I know.

"You are perfectly right that if the Intelligence Service picks up a dangerous agent and finds he is coming to the United States, that ought to go to the F.B.I. like that, and the F.B.I. ought to pick the fellow up or watch him when he arrives. Then, if he leaves this country, the F.B.I. ought to notify the Central Intelligence Agency that he has gone. That is a question of coordination, and I believe with the right kind of people, there is no reason why you cannot have close cooperation between this agency and the State Department and the G-2 and the ONI and the F.B.I.

"If you have that, you have something; and if you are going to have all of these agencies fighting among themselves, you are not going to get anywhere."¹⁴²

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Rep. Manasco (in discussing the meaning of certain language): "Mr. Dulles, would not the language to 'evaluate or disseminate intelligence' cover almost anything in the world that they wanted to do?"

Mr. Dulles: "But, then, you get into the question of what is to be the relationship with the others."

Rep. Manasco: "So far as giving CIG authority to gather intelligence, that language could not be expanded on any by Congress."

Mr. Dulles: "I was looking over this. I do not know what the status of the other bill was."

Rep. Bender (R., Ohio): "It was introduced by the Chairman of the Committee because certain recommendations were made by individuals appearing before the Committee, I understand."

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Rep. Manasco: "I think that language would include everything in the world."

Rep. Judd: "The question is whether you should have some limitations on it. You would have three things. You want the objective and, second, its power and, third, the powers it does not have."

Rep. Manasco: "Limit it to foreign countries, of course."

Mr. Dulles: "There is one little problem there. It is a very important section of the thing, the point I raised there. In New York and Chicago and all through the country where we have these business organizations and philanthropic and other organizations who send their people throughout the world. They collect a tremendous amount of information. There ought to be a way of collecting that in the United States, and I imagine that would not be excluded by any terms of your bill."

Rep. Manasco: "The fear of the committee as to collecting information on our own nationals, we do not want that done, but I do not think the committee has any objection to their going to any source of information that our nationals might have on foreign operations. Is that your understanding?"

Rep. Wadsworth: "Yes."

Rep. Manasco: "They could go to Chicago and talk to the presidents of some of the machinery firms that have offices all over the world."

Mr. Dulles: "That must be done."

Rep. Manasco: "I think we would have no objection to his getting on a plane in France and following a man around the United States."

Rep. Brown: "He might follow one or two of these boys that we brought over to see how we did the war work."

Rep. Judd: "As to Russian agents in this country, only the F.B.I. watches them."¹⁴³

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Admiral Inglis (in a statement of overall views): "Domestic Security: It is my view that the activities of the Central Intelli-

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gence Agency should be confined to the field of foreign intelligence and that it should have no police powers and no domestic security functions other than those connected with the security of its own establishment. It is imperative not only for the production of good intelligence, but for the defense of the American principle of Government, that there be no confusion between the pursuit of intelligence abroad and police powers at home. It is significant that the merging of these two fields is characteristic of totalitarian states. Domestic security and foreign intelligence were controlled by the same hands in the last years of the Nazi state; they have always been in the same hands in the Soviet Union.

"Parenthetically, what I have in mind is a distinction between the function of FBI and CIG. We do not want to encroach on the FBI and have no intention of doing that, and do not think it should be authorized at all. We do not want to build up a Gestapo or a super organization which will have potentially a sinister control of the lives of American people."

Rep. Hardy: "May I interrupt there? By that same token, then, you say that we should not permit the FBI to do any intelligence work in foreign countries?"

Admiral Inglis: "Not except in connection with their law enforcement work here in this country, and as a correlary to that, sir, I think I know what you have in mind. I think I can guess what you have in mind. In order to keep the two systems, the two spy networks, from getting in each other's hair, there must be either a very fine and efficient coordination with full information between the two organizations so where (sic), as in Washington, or else we must rely on one organization to serve the needs of the other abroad, and the second organization to serve the needs of the sister service at home."

Rep. Manasco: "Let me ask you at that point, suppose the FBI had been directed by the Attorney General to make an investigation of an opium ring operating from, we will say, China and San Francisco. The FBI investigators might run onto some information that would require one of their agents to go into China. You would not prohibit him from going there?"

Admiral Inglis: "No, sir, I would not. However, that should be coordinated so that the CIG agents over in China would not be crossing wires with this fellow when he arrives from the FBI."

Rep. Manasco: "The CIG agent would not necessarily be interested in the criminal actions that go on in the United States."

Admiral Inglis: "No, sir."

Rep. Manasco: "It would be purely security."

Admiral Inglis: "I admit without any argument that there are difficult problems that are going to come up in that connection, and my only solution that I have is men of good will to sit around the table and work them out."

Rep. Judd: "Of the two alternatives that you have delineated, you prefer the former, good coordination."

Admiral Inglis: "I prefer the latter. I prefer to leave the organized spy networks abroad to CIG and any information that they get which is pertinent to FBI's work at home in the law enforcement field, let it be turned over to FBI by CIG."

Rep. Judd: "By the same token, could FBI call on CIG for information regarding the source of opium that was coming from where we did not know, Iran or China or somewhere?"

Admiral Inglis: "Absolutely."

Rep. Hardy: "Granted that there is a possibility that operatives representing different agencies, operating in the same area might get in each others' hair, might they not get slightly different slants on a particular piece of information they are trying to secure so that put together it would make a better picture than the one-sided view that would be gotten from a single individual agency?"

Admiral Inglis: "That is conceivable, yes, sir. Of course, any information that we get is usually checked from two or more different sources. For example, we may get from the broadcast which the Russian Government is making to the Russian people an indication that some political move is afoot. We get the idea that they are preparing the Russian people psychologically for some important political move in the international field. We will want to have that deduction confirmed by some other source. This source is the Russian Government propaganda to its own people."

"Well, now, perhaps we will ask CIG to get some information, if they can, from their agents, bearing on that particular problem, to confirm or not what we have deduced from these Russian propaganda broadcasts."

Rep. Hardy: "The point I was trying to make, though, is if you have more than one agency securing information in a particular locality, are you not more likely to be able to get something you can rely on than you have a single one there, because it has got to be acknowledged that a lot of the information they get is deliberately planted for them."

Admiral Inglis: "That is right, sir. I do not think so, sir. That is an imponderable, and in a certain case what you say might work out that way."

Rep. Hardy: "It might cost more money; it would cost more money."

Admiral Inglis: "It would cost more money, and it would lead to more difficulty, I think, than it is worth, because as I say, these people would not know each other's identity, and they would be spending their time chasing each other, instead of going after the real antagonist, the real intelligence target."

Rep. Hardy: "You are presuming there that you would have direct employees over there, rather than that you might be working on local contacts, are you not?"

Admiral Inglis: "Well, whatever you are doing, you have to have some men over there who are operating this spy network, and if you have two of them, they are going to get their wires crossed, and your men are going to devote a good deal of their energies uselessly to either keeping out of the hair of the other operatives, or else unknowingly they are going to be chasing each other, and not producing the information that you want."

Rep. Hardy: "Thank you."

Rep. Chenoweth (R., Colo.): "Are you talking about the FBI yet?"

Admiral Inglis: "Not particularly; any two organized spy networks."

Rep. Chenoweth: "I thought you were making a distinction."

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Admiral Inglis: "We started out that way, but I thought your question was more general."

Rep. Hardy: "It was."

Rep. Chenoweth: "You could not refer to the FBI as a spy organization; they are a law enforcement agency."

Admiral Inglis: "Yes, sir."

Rep. Chenoweth: "They have an entirely different function, no conflict whatever."

Admiral Inglis: "Not in function."

Rep. Chenoweth: "They should not be in each others' hair at any time."

Admiral Inglis: "They might be in the field of counter-espionage because that is also a function of FBI."

Rep. Chenoweth: "So far as the foreign activity is concerned, there is no excuse for them operating in foreign countries that I can see."

Admiral Inglis: "No, sir, I do not mean that."

Rep. Chenoweth: "That is your contention."

Admiral Inglis: "That is my contention, but that has not been the case."

Rep. Chenoweth: "I was surprised when I learned today that they were operating in foreign countries. I did not know that. I thought they confined their activities exclusively to the United States."

Admiral Inglis: "Their responsibility is confined to the United States, but in meeting that responsibility, they do have interests abroad. It is a question of whether they are going to send their own people abroad to do that, or whether they are going to let CIG do that." 144

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House Committee Open Hearings

The House Committee on Expenditures' concern with the internal security was also brought out in public hearings:

Rep. Brown (in questioning the Secretary of the Navy): "This Chief of the Central Intelligence Agency, the Director, should he decide he wants to go into my income tax reports, I presume he could do so, could he not?"

Secretary Forrestal: "I do not assume he could.

"I think he would have a very short life--I am not referring to you, Mr. Brown, but I think he would have a very short life."

Rep. Brown: "Well, he probably would, if he sent (sic) into mine, but I was wondering how far this goes.

"This is a very great departure from what we have done in the past, in America.

"Perhaps we have not been as good as we should have been, and I will agree with that, either in our military or foreign intelligence, and I am very much interested in seeing the United States have as fine a foreign military and naval intelligence as they can possibly have, but I am not interested in setting up here in the United States any particular central policy agency under any President, and I do not care what his name may be, and just allow him to have a gestapo of his own if he wants to have it.

"Every now and then you get a man that comes up in power and that has an imperialistic idea."

Secretary Forrestal: "The purposes of the Central Intelligence Authority are limited definitely to purposes outside of this country, except the collation of information gathered by other Government agencies.

"Regarding domestic operations, the Federal Bureau of Investigation is working at all times in collaboration with General Vandenberg. He relies upon them for domestic activities."

Rep. Brown: "Is that stated in the law?"

Secretary Forrestal: "It is not; no, sir."

Rep. Brown: "That could be changed in 2 minutes, and have the action within the United States instead of without; is that correct?"

Secretary Forrestal: "He could only do so with the President's direct and specific approval."

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Rep. Brown: "I know, but even then it could be done without violation of law by the President or somebody who might write the order for him and get his approval, and without the knowledge and consent or direction of the Congress."

"Do you think it would be wise for the Congress of the United States to at least fix some limitations on what the power of this individual might be, or what could be done, or what should be done, and all these safeguards and rights of the citizen may be protected?"

Secretary Forrestal: "I think it is profitable to explore what you need for protection, and I am in complete sympathy about the dangers of sliding into abrogation of powers by the Congress."

"On the other hand, if you had limited Mr. Hoover, for example, and the Federal Bureau of Investigation, to operations only domestically, he might have been very greatly hampered in this last war."

Rep. Brown: "I am not talking about domestically, and internationally alone, but I am talking about how far he can go in his studies and investigations, especially of individuals and citizens, and for what purposes he can conduct his investigation."

"Now, the Federal Bureau of Investigation is under certain restraints by law."

Secretary Forrestal: "That is correct."

Rep. Brown: "The Secret Service has certain duties and responsibilities written out, word by word, in the statutes."

Secretary Forrestal: "It is a problem for the Congress and the Executive Departments, Mr. Brown. As I say, exploration certainly could be profitable."

"However, there is not the slightest question, and I can assure you from my own experience and knowledge that you need someone in this Government who is going to be charged with that aspect of national security."¹⁴⁵

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Admiral Sherman (on answering a question on greater specificity on the bill): "Well, sir; in my opinion, that is simply a problem in the convenience and handling of legislation. I would like to comment that in the existing directive to the Central Intelligence Group, there appears this provision, 'no police, law enforcement,

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or internal security functions shall be exercised under this directive, ' and I felt that that was fairly concise about the matter that has been discussed here. "

Rep. Harness: "Of course, that can be changed, can it not?"

Admiral Sherman: "I would not think so under this legislation; but I am not a lawyer. If there is concern about it, it seems to me that it is something that could be rectified with very few words."

Rep. Harness: "Well, did you have anything to do with the drafting of this bill, Admiral?"

Admiral Sherman: "Yes, sir; I had a great deal to do with it..."¹⁴⁶

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Dr. Bush (in answering a question concerning the danger of the Central Intelligence Agency becoming a Gestapo): "I think there is no danger of that. The bill provides clearly that it is concerned with intelligence on internal affairs, and I think this is a safeguard against its becoming an empire. 2

"We already have, of course, the FBI in this country, concerned with internal matters, and the collection of intelligence in connection with law enforcement internally. We have had that for a good many years. I think there are very few citizens who believe this arrangement will get beyond control so that it will be an improper affair."¹⁴⁷

House Floor

In line with the House Committee's overall desire for specificity in provisions relating to the Central Intelligence Agency, H. R. 4214, as reported out, contained the provision "...that the Agency shall have no police subpoena, law-enforcement powers, or internal-security functions."¹⁴⁸

Thus, Congressman Holifield could explain during the floor discussion:

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"I am very zealous, as I have said time and again, of the civil liberties of our people, but I believe this agency has had written around it, proper protections against the invasion of the police and the subpoena powers of a domestic police force. I want to impress upon the minds of the Members that the work of this Central Intelligence Agency, as far as the collection of evidence is concerned, is strictly in the field of secret foreign intelligence, what is known as clandestine intelligence. They have no right in the domestic field to collect information of a clandestine military nature. They can evaluate it; yes."¹⁴⁹

The Federal Bureau of Investigation

That aspect of the internal security issue relating to access by the Central Intelligence Agency to information in the possession of the Federal Bureau of Investigation was not so easily resolved.

Under paragraph 5 of the Presidential Directive of 22 January 1946,¹⁵⁰ the intelligence received by the Departments of State, War and Navy's intelligence agencies was to be made "freely available" to the Director of Central Intelligence for correlation, evaluation, or dissemination. Further, the operations of these three intelligence agencies were to be opened to the inspection of the Director of Central Intelligence in connection with his planning for coordination function,¹⁵¹ to the extent approved by the National Intelligence Authority. These provisions were carried over into H. R. 4214 as reported in committee:

"Sec. 105. (e) To the extent recommended by the National Security Council and approved by the President, such intelligence operations of the departments and other agencies of the Government as relate to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination."¹⁵²

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Whereas the 22 January 1946 Presidential Directive by its terms applied solely to the intelligence agencies of the Departments of State, War, and Navy, the language reported out by the committee applied to all Federal departments and agencies. When the matter was opened to amendment during the floor discussion, Congressman Judd pointed out that this would authorize the Agency to inspect the operations of the FBI and he offered an amendment to eliminate this possibility. This amendment was approved by the House and its thrust was incorporated in the Act as it emerged from conference. Excerpts of the House floor discussion on the amendment follow:

Rep. Judd: "Mr. Chairman, to reassure the committee let me say that this is the only other amendment I shall offer, and I present it now because it also has to do with the Central Intelligence Agency. If the members of the committee will look on page 11 of the bill, line 16, subsection (e), and follow along with me, I think we can make it clear quickly. The subsection reads:

'(e) To the extent recommended by the National Security Council and approved by the President, such intelligence operations of the departments and other agencies of the Government as relate to the national security shall be open to the inspection of the Director of Central Intelligence.'

"The first half of the amendment deals with that. It strikes out the words in line 18, 'and other agencies.' Why? Primarily to protect the FBI. I agree that all intelligence relating to the national security which the FBI, the Atomic Energy Commission, and other agencies with secret intelligence activities develop should be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination. The second half of my amendment provides that their intelligence must be made available to the Director of Central Intelligence. But under the amendment he would not have the right to go down into and inspect the intelligence operations of agencies like the FBI as he would of the departments. I do not believe we ought to give this Director of Central Intelligence power to reach into the operations of J. Edgar Hoover and the FBI, which are in the domestic field. Under the language as it now stands he can do that.

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"The Director of Central Intelligence is supposed to deal with all possible threats to the country from abroad, through intelligence activities abroad. But without this amendment he will have not only the results of the FBI's intelligence activities here at home, but also the power to inspect its operations. I do not believe that if we had realized the full import of this language when we were studying it in committee we would have allowed it to stand as it is. Surely we want to protect the Atomic Energy Commission and the FBI from the Director of Central Intelligence coming in and finding out who their agents are, what and where their nets are, how they operate, and thus destroy their effectiveness."

Rep. Busbey: "Under the present language of the bill, is it not the gentleman's judgment that the Central Intelligence Agency has the right, the power, and the authority to go down and inspect any records of the FBI which deal with internal security, whereas the Central Intelligence Agency deals only with external security?"

Rep. Judd: "Yes; not only inspect its records but also inspect its operations, and that includes its activities and its agents. We do not for a moment want that to happen. I hope the members of the committee will accept this amendment."

Rep. Manasco: "If you do not give the Director of Central Intelligence authority to collect intelligence in this country and disseminate it to the War Department and Navy Department, the Air Force, and the State Department, why not strike the entire section out?"

Rep. Judd: "We do under this amendment give him that power. We say: 'Such intelligence as relates to the national security and is possessed by such departments, and other agencies of the Government'--that includes the FBI and every other agency--'shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination.' "

Rep. Manasco: "If the FBI has intelligence that might be of benefit to the War Department or State Department, certainly that should be made available."

Rep. Judd: "Under this amendment it will be made available. I do not strike that part of the section out. All the intelligence the FBI has and that the Atomic Energy Commission has must be available to the Director of Central Intelligence if it relates to the national security. But the Director of Central Intelligence

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will not have the right to inspect their operations, which is quite a different thing. I do not think we ought to give the Director of Central Intelligence the right to go into the operations of FBI."

Rep. Stefan (R., Neb.): "In setting up the Central Intelligence group it was agreed that the FBI was a part of the organization. Now, what would the gentleman's amendment do?"

Rep. Judd: "Does the gentleman state that the FBI is a part of the Central Intelligence Agency?"

Rep. Stefan: "Certainly. As I understand it, as it was explained to our committee, the FBI information would be part of the information secured by the CIG."

Rep. Judd: "That is right. The FBI information would be available to the Director of Central Intelligence, but under my amendment the FBI operations would not be part of the Central Intelligence as they would be under the present language of the bill."

Rep. Stefan: "But the CIG could draw any information from the FBI it wanted?"

Rep. Judd: "Yes, it would be made available, if relating to the national security."

Rep. Stefan: "But what would the gentleman's amendment do other than what this is doing?"

Rep. Judd: "It would merely withdraw the right of the Director of Central Intelligence to inspect the intelligence operations of the FBI. It would still make available to him the intelligence developed by FBI."

Rep. Stefan: "Does the gentleman feel that this section on Central Intelligence makes it possible for the Director of the CIG to go into Mr. Hoover's office?"

Rep. Judd: "That is right."

Rep. Stefan: "And supersede his direction of FBI operations?"

Rep. Judd: "Well, it says plainly that 'Such intelligence operations of the departments and other agencies of the Government as relate to the national security shall be open to the inspection

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of the Director of Central Intelligence. 'Other agencies' certainly includes the FBI.

Rep. Stefan: "And the gentleman objects to the inspection of it, does he?"

Rep. Judd: "The inspection of its operations; yes."

Rep. Stefan: "I agree with the gentleman."

Rep. Judd: "Then the gentleman will support my amendment."

Rep. Stefan: "I certainly shall."

Rep. Judd: "Under it, the information is all available, but the operations are not open to inspection."

Rep. Johnson (R., Calif.): "I want to get this straight. If the FBI has information about fifth-column activities and subversive information affecting the national defense, would that be open to the Central Intelligence Agency?"

Rep. Judd: "Yes. It must be made available under this subsection, but the Director of Central Intelligence under my amendment could not go in and inspect J. Edgar Hoover's activities and work. Central Intelligence is supposed to operate only abroad, but it will have available all the pertinent domestic information gathered by the FBI. It should not be given power to inspect the operations of the FBI."

Rep. Holifield: "The gentleman realizes that the limitations in the first lines would limit his ability to go in and inspect any operation."

Rep. Judd: "That is true."

Rep. Holifield: "I do not think it is necessary for him to inspect the operations in order to set up his own intelligence unit in the way that he wants to, and I point out that the National Security Council is composed of the Secretaries of State, of National Defense, of the Army, the Navy, and the Air Force, and the National Security Resources Board, and the Central Intelligence Agency, so it seems to me that the protection of the National Security Council is a check and the President is a check. I hardly think that the man could exceed his authority."

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Rep. Judd: "Well, I believe the FBI operations should be protected beyond question. It is too valuable an agency to be tampered with."

Rep. Thomas (R., N.J.): "I want to say to the gentleman from Minnesota that I am wholeheartedly in favor of his amendment. If we open the doors to the Central Intelligence Agency to go in and inspect the operations of the FBI, you are starting to do the thing that is going to be the end of the FBI in time, because you will open it to this agency and then you will open it to somebody else. I think we will make a great mistake unless we accept the amendment offered by the gentleman from Minnesota."

Rep. Judd: "I thank the gentleman. I think we will all agree he knows what he is talking about."

Rep. Busbey: "In reference to the gentleman from California (Mr. Holifield), when he states that we can assume that this National Security Agency will do this and do that, I just wish to remind the membership that the trouble in the past with legislation has been that we have not taken the time to spell out the little details. It is these assumptions we have had that have gotten us into trouble. I think it is very important that the gentleman's amendment be adopted."

Rep. Andresen (R., Minn.): "Is there anything in here that permits the FBI to inspect the personnel of the Central Intelligence?"

Rep. Judd: "No; there is not."

Rep. Andresen: "I understand that some of the men in Central Intelligence at the present time are certain foreign-born persons who might need some inspection, and they hold some very important positions with Central Intelligence."

Rep. Judd: "I have had no information on that one way or the other. I must assume the Director of Central Intelligence is going to exercise utmost care in choosing his personnel. I hope this amendment will be adopted because I cannot see how it can hurt the Central Intelligence Agency in the slightest and it certainly will protect the intelligence operations of FBI and the Atomic Energy Commission."153

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Conferees

The language adopted by the House and Senate conferees in connection with the intelligence of other departments and agencies of the Government provided:

"Sec. 102. (e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: Provided, however, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security."154

Thus, the inspection role of the Director of Central Intelligence was identified with "intelligence" as contrasted with "intelligence operations." The correlation, evaluation, and dissemination functions were preserved by directing that intelligence relating to national security be made available to the Director of Central Intelligence.

Section 102 (e) applied to all departments and agencies of the Government. However, in the case of the FBI, institutional disengagement as well as functional disengagement between the Central Intelligence Agency and the domestic intelligence of the FBI was achieved.

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Summary

A clear and complete divorce from internal security functions had been a constant principle for a Government-wide foreign intelligence service since its early conceptualization.

Clearly, however, a Government-wide foreign intelligence service had a legitimate interest in using domestic sources for obtaining intelligence information originating outside of the United States. This was fully appreciated by the Congress in establishing the cleavage between the intelligence functions of the Central Intelligence Agency and the domestic functions of the other departments and agencies.

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CHAPTER X. NATIONAL SECURITY ACT OF 1947

Public Law 253, 80th Congress, the National Security Act of 1947, was approved by the Congress on the 25th of July 1947 and was signed by President Truman the following day. The provisions relating to the Central Intelligence Agency became effective 18 July 1947, the day after Mr. James Forrestal took the oath of office as the first Secretary of Defense.

Section 102 of the National Security Act of 1947 established the position of the Director of Central Intelligence and the Central Intelligence Agency. It also established functions and executive branch relationships for central intelligence. Congress provided the Agency with a definitive charter which did not unduly circumscribe, curtail, or interfere with functions of other agencies and departments of Government.

During the almost five months of Congressional deliberation a significant number of issues concerning CIA were resolved, this despite the fact that CIA was only one segment of a highly complicated and controversial legislative proposal.

Controversy surrounding the Agency which was prompted primarily by a misunderstanding of the functions to be performed was resolved for the most part to the satisfaction of all parties concerned. On a more general level the legislative history surrounding CIA bespeaks of overwhelming support for institutionalizing foreign intelligence to serve the needs of the President and his policy advisors. In so far as it is possible

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to achieve an executive objective through legislation, Congress provided authority and responsibility for both the comprehensive and effective functioning of central intelligence, in all its elements.

While an enabling act setting forth administrative authorities for the Central Intelligence Agency would become the next pressing order of business, central intelligence as an integral function of the Executive Branch of Government had been statutorily prescribed. This would permit those charged with the responsibility for administering the Agency to get on with the demanding job of building an organization equal to the important national responsibility levied upon it.

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FOOTNOTES

CHAPTER I.

1. For a brief summary of the authorities of Central Intelligence, See Kirkpatrick, "Origins, Missions, and Structure of CIA" in Studies In Intelligence, Volume II, No. 1, Winter 1958.
2. Article 1, Section 8.
3. Story Commentaries on the Constitution, II, Sec. 1185, 4th Ed., 1873.
4. 53 Stat. 561
5. Reorganization Plan No. 1, 1 July 1939, 4 F.R. 2727, 53 Stat. 1423.
6. Executive Order 8248, 8 September 1939, F.R.
7. Administrative Order of the President, 25 May 1940.
8. Administrative Order of the President, 7 January 1941.
9. Presidential Order of 11 July 1941, 6 Fed. Reg. 3422.
10. Actually the President had earlier, on 25 June 1941, drawn a military order as Commander in Chief, designating this office as the Coordinator of Strategic Information to include the performance of duties of a "military character" for the President. The preeminence of the President's regular military advisors for military matters was corrected in the 11 July order.
11. Presidential letter dated 23 July 1941.
12. House Committee on the Judiciary, Report No. 1507, 15 Dec. 1941.
13. Military Order, 16 Fed. Reg. 3422. For establishment of Joint Chiefs of Staff and description of its functions and duties. See Federal Records of World War II (1951), II, pp. 6-9. National Activities and Records Service, and Ray S. Cline, Washington Command Post: The Operations Division (United States Army in World War II series), pp. 98-103.
14. Executive Order 9182.

15. Executive Order 9001, 27 December 1941, Fed. Reg. Doc. 41-9798, and Executive Order 9241, 1 September 1942, 6 Fed. Reg. 6787.
16. 56 Stat. 704.
17. 57 Stat. 526.
18. National War Agencies Appropriation Act of 1945 (58 Stat. 533), and National War Agencies Appropriation Act of 1946 (59 Stat. 483). Also see OGC regarding internal requirements to assure the full satisfaction of this high trust.
19. Need Oct 44 Donovan Memo to Pres.
20. Memo for the President from William J. Donovan, Director, OSS, dated 18 November 1944, with attached directive "Substantive Authority Necessary in Establishment of a Central Intelligence Service."
21. Ibid. 20.
22. Ibid. 20.
23. Report by the Joint Strategic Survey Committee, "Proposed Establishment of a Central Intelligence Service." (24 January 1945).
24. J. C. S. 1181/5 (19 September 1945).
25. Ibid. 23. (Ibid. 24?)
26. Letter from Director, OSS, to Director, BOB, dated 25 August 1945.
27. Including an extensive "Report on Intelligence Matters" from Brig. Gen. John Magruder, Director, Strategic Services Unit (26 October 1945).
28. Memorandum for the Secretary of War, "Preliminary Report of Committee Appointed to Study War Department Intelligence Activities" (3 November 1945).
29. Letter from President to Secretary of State, dated 20 September 1945.
30. Memorandum for the Secretary of War, Secretary of Navy, from Secretary of State, Subject: National Intelligence Authority.
31. Letter from Secretary of State to Secretaries of War and Navy, National Intelligence Authority, 10 December 1945.

32. "Establishment of National Intelligence Authority," Attachment to 10 December 1945 memorandum from Secretary of State to Secretaries of War and Navy, Subject: National Intelligence Authority.
33. Letter to President from Secretaries of State, War, and Navy, dated 7 January 1946.
34. Memo from Special Assistant for the Secretary of State to the Secretaries of War and Navy, NIA, 15 December 1945.
35. Draft "Directive Regarding the Coordination of Intelligence Activities," Paragraph 8.
36. S. B. L. Penrose, Jr., Collection of Background Papers on Development of CIA, dated 15 May 1947.
37. Memorandum to General Magruder from Commander Donovan, General Counsel, OSS (23 January 1946).
38. Letter to the President from Secretaries of State, War, and Navy, dated 7 January 1946.

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39. Memo for the President from William J. Donovan, Director, OSS, dated 18 November 1944, with attached directive, "Substantive Authority Necessary in Establishment of the Central Intelligence Service."
40. Ibid. 38
41. Memo for Clark M. Clifford, dated 2 December 1946, Subject: Proposed Enabling Legislation for the Establishment of a CIA.
42. Authority to hire personnel directly and independent budget were needed most. Fortunately BOB, GAO, State, War, Navy, and Treasury recognized the problems and made arrangements which enable CIG to operate. See 1 OGC 117 regards working fund for DCI.
43. Letter from President Truman to Senator Thomas Walsh, Representatives May and Vinson. 15 June 1946.
44. This section was deleted from final draft. CIG had urged that phrase "subject to existing law" be eliminated as it adds nothing and many of the functions and authorities of this Agency are excepted from existing law." (Letter to Charles Murphy, 27 January 1947.) While Admiral Leahy, the President's personal representative to the NIA, agreed, Mr. Murphy suggested that the entire clause be omitted and CIG agreed. (Page 4, Proposed legislation for CIG, Chief, Legislative Liaison Division Memorandum for the Record.)
45. Memorandum for the Record, Proposed Legislation for CIG, Chief, Legislative Liaison Division, CIG.
46. The salary was lowered from \$15,000 to \$14,000 by the White House drafters on basis that incumbent would be a military or naval officer whose salary should not be greatly in excess of that of Chief of Staff or Chief of Naval Operations, and it was established at the same level as that of Director, Military Applications of AEC. (Proposed CIG Legislation Memorandum for the Record, Chief, Legislative Liaison Division.)

47. Proposed CIG Legislation Memorandum for the Record, Chief, Legislative Liaison Division, undated.
48. Congressional Record, p. 9606, 19 July 1947.

CHAPTER III.

49. House Report 2734, 79th Congress, Second Session (1946).
50. Senate Report 1327, 79th Congress, Second Session.
51. New York Times, 19 October 1945, p. 3, col. 1.
52. See Page 30 supra for the wording of the CIA section. Title II was changed to Title I since it provides "...on the highest level, under the immediate supervision of the President, the establishment of integrated policies and procedures for the departments, agencies and functions of the Government relating to National Security..." (S. Report 239, 80th Congress, First Session). Further, Coordination for National Security "...was outside, separate and apart, from the Defense Establishment (and) in an effort to bring a realization to the members of the Committee that we were seeking a national security organization and not a national military establishment, I was able to have the Committee amend the bill...thus at least placing first things first." (Senator Robertson, Congressional Record, p. 8475, 7 July.)
53. The Legislative Reorganization Plan of 1946 combined the Committee for Naval Affairs and the Committee for Military Affairs.
54. On 1 May 1947, the DCI, General Hoyt Vandenberg, was succeeded by Admiral Roscoe Hillenkoetter.
55. Congressional Record, 19 July 1947, p. 9605.

CHAPTER IV.

56. Senator Thomas had worked on the Common Defense Act of 1946 which was reported out of the Military Affairs Committee but which died in the Naval Affairs Committee.
57. Congressional Record, 14 March 1947, p. 2139.
58. Testimony before Senate Armed Services Committee, 1 and 2 April 1947.
59. Testimony before Senate Armed Services Committee, 29 April 1947.
60. Hearings before House Committee on Expenditures in the Executive Departments on H. R. 2139, 13 May 1947.
61. Ibid., 15 May 1947.
62. Secretary Forrestal was to be appointed the first Secretary of Defense.
63. Ibid., 10 June 1947.
64. Ibid., 26 June 1947.
65. Senate Report 239, p. 2, 80th Congress, First Session, 5 June 1947.
66. House Report 961, p. 3, 80th Congress, First Session, 16 July 1947.
67. Congressional Record, 7 July 1947, p. 8466.
68. Congressional Record, 9 July 1947, p. 8677.
69. Congressional Record, 9 July 1947, p. 8671.
70. Congressional Record, 19 July 1947, p. 9565.
71. Congressional Record, 19 July 1947, p. 9569.
72. Congressional Record, 19 July 1947, p. 9573.

73. Congressional Record, 19 July 1947, p. 9579.
74. Congressional Record, 19 July 1947, p. 9581.
75. Congressional Record, 19 July 1947, p. 9582.
76. Congressional Record, 19 July 1947, p. 9590.
77. Congressional Record, 19 July 1947, p. 9576.
78. Congressional Record, 19 July 1947, p.
79. Congressional Record, 19 July 1947, p. 9585

CHAPTER V.

80. Page 20 supra.
81. Page 31 supra.
82. Page 20 supra.
83. Hearings before House Committee on Expenditures in the Executive Departments on H. R. 2139, 24 June 1947.
84. Ibid., 26 June 1947.
85. Hearings before Senate Armed Services Committee on S. 758, p. 526.
86. Ibid., p. 669.
87. Ibid., p. 527.
88. Congressional Record, 9 July 1947, p. 8688.
89. Ibid.
90. Hearings before Senate Armed Services Committee on S. 758, pp. 173-176.
91. Ibid., p. 497.
92. House Report 961, 80th Congress, First Session.
93. Congressional Record, 19 July 1947, p.
94. Page 29 supra.
95. Hearings before House Committee on Expenditures in the Executive Departments on H. R. 2139 (1947).
96. Public Papers of the Presidents of the United States, John F. Kennedy, 1961, Item 485. Public Papers of the Presidents of the United States, Lyndon B. Johnson, 1965, Item 209 (Note). Letter from the President of the United States to the Director of Central Intelligence, dated September 24, 1965.
97. P. L. 80-253, Section 102(a).
98. Ibid., Section 102(d).

Chapter VI.

99. P. 20 supra.
100. P. 38 supra.
101. Hearings before Senate Committee on Armed Services on S. 758, 80th Cong., 1st Sess., p. 176 (1947).
102. Congressional Record, 7 July 1947, p. 8486.
103. H. Rep. 961, 80th Cong., 1st Sess., p. 3 (1947).
104. Hearings before House Committee on Expenditures in the Executive Departments on H.R. 2139, 80th Cong., 1st Sess., p. 120 (1947).
105. Ibid., p. 125.
106. Ibid., p. 170.
107. Statement of Lt. Gen. Vandenberg, Director of Central Intelligence, before the House Committee on Expenditures in the Executive Departments (1 May 1947), and Hearings before Senate Armed Services Committee on S. 758, 80th Cong., 1st Sess.
108. Hearings before Senate Committee on Armed Services on S. 758, 80th Cong., 1st Sess., p. 496 (1947).
109. P. 67 supra.

Chapter VII.

110. Footnote 49 supra.

111. P. 34 supra.

112. Hearings before the House Committee on Expenditures in the Executive Departments on H. R. 2319, Unpublished classified transcript, 27 June 1947.

113. Penrose Papers.

Chapter VIII.

114. P. 30 supra.
115. Hearings before House Committee on Expenditures in the Executive Departments on H.R. 2139, 80th Cong., 1st Sess., p. 439 (1947).
116. Congressional Record, 19 July 1947, p. 9604.
117. Congressional Record, 25 July 1947, p. 10271.
118. Fixed term appointment of up to 10 years had been suggested.
119. Rep. Robert A. Harness (R., Ind.).
120. 10 U.S.C. 576; R.S. sec. 1222; 14 Op. Atty. Gen. 200.
121. As reported out of Senate Committee, the salary of the position was reduced from \$14,000 to \$12,000 per annum in line with an across the board reduction for certain positions under the National Security Act of 1947.
122. Congressional Record, 7 July 1947, p. 8458. Admiral Sherman suggested before the Senate Committee that addition of the phrase "from military or civilian life" or vice versa would clarify the intent that a civilian could be appointed Director.
123. P. 26 supra.
124. S. Rep. 239, 80th Cong., 1st Sess., p. 10 (1947).
125. Congressional Record, 7 July 1947, p. 8486.
126. Congressional Record, 9 July 1947, p. 8664.
127. Hearings before the Committee on Expenditures in the Executive Departments on H.R. 2319, 80th Cong., 1st Sess., Unpublished classified transcript, 27 June 1947.
128. The House Committee on Expenditures in the Executive Departments set a salary of \$14,000 for the DCI, \$2,000 more than approved in S. 758. The salary of the Chairman of the National Security Resources Board was set at the same level. (See footnote 46 supra.) The salaries of the Service Secretaries were set at \$14,500. Cabinet members at the time received \$15,000 per annum.

129. Congressional Record, 19 July 1947, p. 9576.
130. Congressional Record, 19 July 1947, pp. 9605 - 9607.
- (131. H. Rep. 1051, 80th Cong., 1st Sess., National Security Act of 1947, pp. 3 - 4.
132. Congressional Record, 19 July 1947, p. 10271.
133. Congressional Record, 19 July 1947, p. 10272.

Chapter IX.

134. P. 12 supra.
135. Statement of Lt. Gen. Vandenberg before Senate Committee on Armed Services. Hearings in the 80th Cong., 1st Sess., on S. 758, p. 497 (1947).
136. Additional views of Chairman Hoffman on H.R. 961, 80th Cong., 1st Sess., p. 11 (1947).
137. Hearings before Committee on Expenditures in the Executive Departments, H.R. 2319, 27 June 1947, p. 15.
138. Ibid., p. 28.
139. Ibid., p. 32.
140. Ibid., pp. 57 - 58.
141. Ibid., pp. 59 - 60.
142. Ibid., pp. 61 - 62.
143. Ibid., pp. 65 - 66.
144. Ibid., pp. 149 - 154.
145. Hearings before the Committee on Expenditures in Executive Departments in the House, 80th Cong., 1st Sess., H.R. 2319, National Security Act of 1947, pp. 127 - 128 (1947).
146. Ibid., p. 172.
147. Ibid., p. 559.
148. H.R. 4214, Sec. 105 (d) (3).
149. Congressional Record, 19 July 1947, p. 9591.
150. P. 21 supra.
151. Presidential Directive, 22 January 1946, para. 3B (see p. 20 supra).

152. Congressional Record, 19 July 1947, p. 9601.
153. Congressional Record, 19 July 1947, p. 9601.
154. H.R. 1051, 80th Cong., 1st Sess., National Security Act of 1947, Sec. 102 (E), 1947.

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OGC 74-0018

3 January 1974

MEMORANDUM FOR: Executive Assistant to the Director of
Personnel

SUBJECT: Retention of Maiden Names for Administrative
Purposes

1. In December 1972, this Office was of the opinion that the Government had the right to designate a married woman by her husband's name on payrolls and on other administrative records, even though the woman used her maiden name for business and social purposes. We also held that exceptions to this rule could be made in appropriate cases, such as for cover and security reasons. The above ruling was based on an opinion provided by the Comptroller General. 19 Comp. Gen. 203.

2. I have checked with the Comptroller General's office to determine the status of the above-cited case. I was advised that although not overruled, this case probably is outdated in view of the strong trend against unreasonable procedures which tend to discriminate against women in Government service.

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3. The Comptroller General's office pointed up the necessity, however, of requiring women to submit all relevant data regarding their marital status to the appropriate office so that they could be identified as "married," "single," "divorced," and so forth, to assist the Agency in avoiding administrative errors.

4. In sum, there appears no valid legal reason to deny a married woman the right to retain her maiden name for administrative purposes. The Civil Service Commission, moreover, is

of the opinion that how records are kept is a matter of administrative discretion of each agency. We feel, then, that unless there are valid policy reasons to the contrary, female employees of the Agency should be able to retain their maiden name, if they choose to do so.

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Assistant General Counsel

JGB:ks

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8 January 1974

MEMORANDUM FOR: Deputy Director of Personnel for
Recruitment and Placement

SUBJECT : Applicant Loyalty Statement

1. You requested the opinion of this Office as to whether, in view of the Civil Service Commission (CSC) practice, the Agency should revise Appendix I to our Personal History Statement (PHS) that we require of all applicants. You forwarded a copy of a letter of the Seattle Region of CSC to their field establishments (except postmasters), which gives instructions concerning revision of loyalty questions on their application for employment form, SF 171. Apparently, this letter was issued pursuant to CSC Bulletin 731-1 to the Heads of Departments and Agencies, dated 12 November 1973. As you will see by the following discussion, the question is rather complex because it involves not only the constitutionality of the practice itself, but also the authorities of a number of government entities.

2. Appendix I of the PHS requires the applicant to read a list known as the "Attorney General's list", of organizations, which, pursuant to Executive Order 10450, dated 27 April 1953, have been identified by the Attorney General as totalitarian, Fascist, Communist, or subversive, or as having adopted or having shown a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means. Further, the applicant must certify that he, to the best of his knowledge, is not or has not been a member of, contributed to, received literature from, signed petitions of or in behalf of, or attended meetings of any of these organizations. He must also certify that his close relatives have not been so involved. If he cannot so certify, he must give an explanation of his or his relatives' activities.

3. Executive Order 10450 was promulgated under the President's constitutional and statutory authorities, including a number of provisions of Title 5 of the United States Code. While some of those provisions have been declared unconstitutional, the Order itself has not been so declared. Zuckerman v. United States; 329 F.Supp 957 (D. Minn. 1971). Among other authorities, the Order rests on 5 U.S.C. 7301, which authorizes the President to prescribe regulations for conduct of employees in the executive branch. While the Constitution vests the executive power in the President and charges him with taking care that the laws be faithfully executed, the Constitution makes no specific reference to a power in the President to remove from office. This silence has been the source of historic controversy and was the subject of considerable discussion in Myers v. United States, 272 U.S. 52 (1926). There, it was the view of the Court that the power to remove was an incident of the power to appoint.

4. Section 2 of the Executive Order, as amended, states that:

The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Further, Section 12 states that the Department of Justice will continue to furnish the type of information contained in Appendix I to the head of each department and agency. Section 14 designates CSC, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, to monitor the implementation of the order. Certain other functions are delegated to the Subversive Activities Control Board by Executive Order 11605 (2 July 1971), which amended E.O. 10450. However, because of the lack of recent appropriations for that Board, those functions have been indirectly repealed. We can find nothing in the

This opinion is supported by a conclusion stated in House Report No. 92-1637 entitled The Federal Civilian Employee Loyalty Program, 3 January 1973 by the Subcommittee on Loyalty-Security, House Committee on Internal Security. At page 141 it is stated that with respect to E.O. 10450, "i/t is evident that the functions thus delegated and reposed in the Civil Service Commission and the Attorney General are at best advisory only." Further, at page 137, it is stated that "w/ith respect to...all positions in the excepted service the departments and agencies are confided sole authority or responsibility for denials /of employment/ and removals /from employment/." Also, see page 42 of House Report No. 93-301, entitled Annual Report for the Year 1972 of the House Committee on Internal Security, 21 June 1973.

5. Notwithstanding the lack of specific authority of CSC over the Agency's loyalty-security program, we have reviewed their practice. CSC Bulletin 731-1 states:

Recent decisions of the Supreme Court make it clear that mere membership in an organization that espouses the unlawful overthrow of the government may not be inquired into, and that the only fact of relevance is membership with knowledge of the unlawful purpose of the organization, and with specific intent to carry out that purpose.

Based on this interpretation, CSC has recently revised their employment application to reflect this interpretation.

6. It is our understanding that CSC relied on three recent Supreme Court decisions in making the interpretation as expressed in Bulletin 731-1. Those three cases are Baird v. Arizona, 401 U.S. 1 (1971), In Re Stolar, 401 U.S. 23 (1971), and Law Students Research Council v. Wadmond, 401 U.S. 154 (1971). Each of these cases involved a state's practice in licensing attorneys to practice law. A majority of the Court could not agree on an opinion in any of the three cases. In all of the cases Justices Black, Douglas, Brennan and Marshall were found squarely on one side and the Chief Justice and Justices Harlan, White and Blackman took the opposite view. Mr. Justice Stewart took a somewhat different view from either of these groups, concurring

with the former group in Baird and Stolar, and with the latter in Wadmond. Thus, these cases do not precisely set forth clear standards. In dicta--with respect to federal employees--in Stolar, Mr. Justice Black, in writing the opinion for the Court, stated at 401 U.S. 24:

The central question in all of them /the above-named cases/ has been the same, whether involving lawyers, doctors, marine workers or State and Federal government employees, namely: to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct?

7. Mr. Justice Black went on to say that the state may not require an applicant to state whether he has been or is a member of any organization which advocates the overthrow of the government of the United States by force. As outlined in Wadmond, the inquiring must be limited to the knowledge that the applicant had that the organization with which he had membership advocated the overthrow of the Government by force or violence and his specific intent to further the organization's illegal goals. However, notwithstanding this standard, Mr. Justice Black did, at 401 U.S. 165, state:

It is well settled that Bar examiners may ask about Communist affiliations as a preliminary to further inquiry into the nature of the association and may exclude an applicant for refusal to answer.

However, as Mr. Justice Black outlined in Baird, this is not a general rule in that admission may not be denied merely because the applicant refuses to answer a question as to whether he has ever been a member of any organization that advocates overthrow

of the Government by force or violence. Mr. Justice Stewart, in a concurring opinion in Baird, attempted to outline the standard as he stated at 401 U.S. 9:

...mere membership in an organization can never, by itself, be sufficient ground for a State's imposition of civil disabilities or criminal punishment. Such membership can be quite different from knowing membership in an organization advocating the overthrow of the Government by force or violence, on the part of one sharing the specific intent to further the organization's illegal goals.

8. In discussing the matter of using the Attorney General's list with Mr. Lester Krute of CSC's Bureau of Personnel Investigations (BPI), it is my understanding that CSC has discontinued use of the list. This practice was confirmed by testimony of the Director, BPI, concerning H.R. 11120 (page 18 of House Report No. 93-301). Apparently, this is due, in part, to the ruling in Veterans of the Abraham Lincoln Brigade v. Attorney General, 370 F.2d 441 (D.C. Cir. 1972), which required that the names of the Veterans and of the Brigade itself be removed from the list. In a notice dated 15 February 1973, the Attorney General removed these two names from the list. 38 Fed. Reg. 6292 (1973). Accordingly, CSC Form 385, which contains the list, is now out of print and CSC has instructed the General Services Administration not to print any more of these forms until the Department of Justice determines what is to be the future use of the list. We note, incidently, that Appendix I contains the names of both the Veterans and the Brigade which directly violates the order of the U.S. Court of Appeals, District of Columbia Circuit as stated at 470 F.2d 445 and the notice of the Attorney General.

9. In reviewing the United States Code for applicable provisions, we note that 5 U.S.C. 3333 requires, with one exception not applicable here, each individual who accepts office or employment in the U.S. Government to execute an affidavit within 60 days after accepting the office or employment that his acceptance and

holding office or employment does not or will not violate 5 U.S.C. 7311. Among other things, 5 U.S.C. 7311 prohibits an individual from accepting or holding a U.S. Government position if he (1) advocates the overthrow of our constitutional form of government, or (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government. However, Section 7311 was ruled unconstitutional by a three judge court in Stewart v. Washington, 301 F.Supp. 610 (D. D.C. 1969), and the government indicated in Zuckerman that it intends to follow that ruling.

10. We have reviewed the detailed and extensive hearings and investigations of the Congress, particularly the House Committee on Internal Security, on this subject (see House Report No. 92-1637, The Federal Civilian Employee Loyalty Program, dated 3 January 1973, and House Report No. 93-301 Annual Report for the Year 1972, Committee on Internal Security, dated 21 June 1973). There, it is recognized that organizations determined to be Communist and so designated under E.O. 10450 are now largely defunct (page 2 of House Report No. 93-301). They also observe that the last designation of an organization for inclusion on the Attorney General's list was made on 20 October 1955. The failure to update the list appears to have adversely affected the administration of E.O. 10450 (page 22 of House Report 93-301). The majority of House Committee on Internal Security is in agreement, however, "...that the maintenance of a current and reasonably comprehensive Attorney General's list of subversive organizations .../is/ indispensable to the efficient operation of the Federal Civilian Employee Loyalty-Security Program." (Page 26 of House Report No. 93-301). The Congress recognizes that the current practices in the federal employee loyalty-security program are rather confused; however, to date, while various bills have been introduced to remedy the situation, no legislation has been passed.

11. There are three U.S. District Court cases which are applicable to the subject matter. In Zuckerman v. United States, a July 20, 1971, decision of the U.S. District Court for the District of Minnesota, the plaintiff Zuckerman had made application for a medical residency at the Veterans Hospital in Minneapolis under

a Federal program. The court assumed that, on the basis of such cases as United States v. Robel, 389 U.S. 258 (1967), Elisbrandt v. Russell, 384 U.S. 11 (1955), Aptheker v. Secretary of State, 378 U.S. 500 (1964), and Keyishian v. Board of Regents, 385 U.S. 589 (1966), "the government cannot exclude from non-sensitive jobs those persons who refuse to answer questions about associations with 'subversive' groups." On assertedly first amendment grounds, Judge Lord enjoined the United States and the Veterans Administration from requiring, as a condition of Federal employment, a response to the following questions:

19. Are you now, or within the last ten years have you been, a member of the Communist Party, U.S.A., or subdivision of the Communist Party, U.S.A.?

20. Are you now, or within the last ten years have you been, a member of an organization that to your present knowledge advocates the overthrow of the constitutional form of government of the U.S. by force or violence or other unlawful means? (If you answer "yes" to 19 and 20, give on a separate sheet: (1) the name of the organization; (2) the dates of your membership; and (3) your understanding of the aims and purposes of the organization at the time of your membership.)

These questions, thus nullified, were identical to questions being asked in the CSC's SF 171 in use at that time. The government chose not to appeal the case; thus, revision of SF 171 was required. In Cummings v. Hampton, decided on October 14, 1971, another district court, that of the Northern District of California, again voided the requirement of response to questions on a Veterans' Administration form identical to those in Zuckerman. The questions were revised; however, they were again found to be unsatisfactory in Cummings v. Hampton, decided by the same court on 29 August 1972 (41 LW 2174). There, the court stressed the requirement that the questions must relate to the knowledge and specific intent of the party being questioned. It is our understanding that this opinion was upheld by the U.S. Court of Appeals, 9th Circuit on 27 September 1973.

The Government likewise accepted the action of the court in Gordon v. Blount, 336 F.Supp.1271 (D. D.C. 1971), reversing CSC's action in dismissing an active and admitted member of the Socialist Workers Party (SWP), a Trotskyite communist organization, holding that CSC had misused the Attorney General's list in applying it to Gordon. Gordon's reinstatement was ordered and CSC took no subsequent action to remove him. Most importantly, the court noted that the U.S. Court of Appeals, 7th Circuit has held that, based on the record before that court, substantial evidence did not exist to support the finding that the SWP advocates or teaches the violent overthrow of the government, Scythes v. Webb, 307 F.2d 905, 909 (7th Cir. 1962). Accordingly, in Gordon, the court ordered that the Attorney General's list not be used against the SWP in an unlawful manner in the future.

12. In view of the lack of any specific requirement to use the Attorney General's list, the current practice of the CSC in not using the list and the attitude of Congress toward the lack of utility of the current list, this Office can find no legal requirement to continue its use. Further, while we recognize that discontinuation of its use is somewhat of a policy issue, we are of the view that there is ample justification, particularly in view of the recent court decisions from which the government has chosen not to appeal, to terminate its use. If the policy decision is made in which the Agency continues to use the Attorney General's list, it must be revised to reflect the court orders and the Attorney General's notice mentioned above. In addition, irrespective to the future use of the list, we think it advisable to either revise Appendix I or include in the PHS the type of revised questions that CSC has made a part of their SF 171. We are strongly of the opinion that pre-employment screening procedures and techniques are, by far, the Agency's most effective tools in maintaining our high level of employee loyalty and security. Discontinuation of use of the Attorney General's list should not, in our view, impede those procedures.

13. We are sending a copy of this opinion to the Office of Security. We will be happy to work with you, O/S, or both in order to determine our future use of the list and associated loyalty/security questions.

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Att-Background Papers



Office of General Counsel

cc: D/S

OGC: JED: cap

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OGC 74-0068

14 January 1974

MEMORANDUM FOR: Deputy Director for Intelligence

SUBJECT : Agency Publications Made Available to
the Superintendent of Documents

1. Recently this Office had the opportunity to review various statutory provisions which relate to the printing and publication of unclassified documents. In this review we found provisions that the Agency is not complying with and, as the type of document of concern mainly originates in your Directorate, we thought you would want to take action to correct this situation.

2. The U.S. Code at 44 U.S.C. 1710 requires the head of each Government agency to deliver to the Superintendent of Documents a copy of every document, not confidential in character, issued or published by that agency. Literal interpretation of this provision might lead one to conclude that the provision requires all non-classified documents to be delivered; however, it is our view that the intent is to limit delivery to those types of documents as described by 44 U.S.C. 1902. That provision requires that all Government publications, except those determined by the issuing component, (a) to be required for official use only, (b) to be required for strictly administrative or operational purposes which have no public interest or educational value, and (c) to be classified for national security reasons, shall be made available to depository libraries through the facilities of the Superintendent of Documents. To accomplish this requirement, each Government component furnishes to the Superintendent a list of such publications it issued during the previous month that were obtained from sources other than the Government Printing Office. Then, the Superintendent informs the component as to the number of copies required for distribution to the depository libraries and the component delivers that number to the Superintendent for distribution to the libraries. 44 U.S.C. 1903 requires the issuing component to bear the extra printing costs for these copies.

3. In reviewing Agency practice we understand that the Agency supplies a number of its unclassified documents to the Library of Congress' Documents Expediting Project (Doc Ex). In part, at least, we understand that the Agency participates in this project in order to inform the public of those Agency activities that are not classified in nature. Notwithstanding the fact that both the Library of Congress and the Superintendent of Documents, Government Printing Office, are parts of the legislative branch, the statutory provisions cited above do not make provision for unilateral substitution of one for the other. Our review of these provisions has led us to conclude that they are clear and explicit. Furthermore, while we recognize that these provisions potentially increase our administrative burden and operational costs, we can find no basis for the Agency to be excepted with respect to those documents that are unclassified and not otherwise confidential in nature. Compliance may provide a very convenient and relatively easy means of furthering the Agency objective of informing the public as referred to above.

4. We are aware that there is speculation that the Superintendent is not complying fully with the above-cited provisions, particularly Section 1902. It is the view of this Office that the Agency should have positive documented evidence of the Superintendent's position rather than rely on what we speculate his position might be. Certainly if he replies that he cannot fulfill his responsibilities under the provisions, we have no power or authority to do other than accept this situation. However, it is our view that we should have positive documentation of this position otherwise we see no alternative other than to comply.

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5. assigns the responsibility for maintaining liaison with the Government Printing Office to the Director of Logistics. Accordingly, we are sending a copy of this memorandum to him. We will be glad to work with your Office, the O/L, or both if we can be of assistance in resolving this matter.

25X1A



Office of General Counsel

cc: D/L

OGC:JED:cap

Original - Addressee

1 - OGC Subj: PUBLICATIONS 1 - JED Signer 1 - Chrono

OGC 74-0114

23 January 1974

MEMORANDUM FOR: Mr. Warner

SUBJECT : Central Investigative Agency, Inc.

REFERENCE : Ltr to A/Gen. Cnsl., fr C/General Crimes
Section/Criminal Div., DOJ, dtd 15 Jan 74,
Same Subj.

1. Referent letter forwarded a copy of a memorandum from the U.S. Attorney, Atlanta, and requests Agency thoughts as to whether subject company, by the use of the name "Central Investigative Agency, Inc." or the initials "CIA", violates the U.S. Code. More specifically, is there a violation of 18 U.S.C. 712?

2. The pertinent part of Section 712 states that:

Whoever, ...being engaged in furnishing private police, investigation, or other private detective services, uses as part of the firm name of such business, or employs in any communication, correspondence, notice, advertisement, or circular...any emblem, insignia, or name, for the purpose of conveying and in a manner reasonably calculated to convey the false impression that such business is a...agency... of the United States... shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

3. As stated in Section 712, a number of elements must be proved--beyond a reasonable doubt--before a conviction could be obtained. First, the organization must be engaged in private in-

vestigative activities. The letter from "CIA" Inc. forwarded by the U.S. Attorney, Atlanta, clearly indicates that it is so engaged. Further, the letter satisfies the second requirement that the name be used in a communication. Third, the organization must use an emblem, insignia, or name for the purpose of conveying, and in a manner reasonably calculated to convey, the false impression that its business is a part of the United States Government.

4. The initials C.I.A. are never used in the U.S. Code as a designation of the Agency; however, there is little doubt that through the press and other public information media, the initials are synonymous with and a designator of this Agency. One could argue then that the initials C.I.A. constitute, in the public's mind a legal and official designation of a part of the U.S. Government..

5. The "CIA" Inc. letter uses the initials "CIA" together with its name "Central Investigative Agency, Inc." In my view there is nothing in the letterhead or in the body of the letter itself which could be used to infer that the organization reasonably calculated to convey the false impression that it was part of the U.S. Government. To the contrary, the letter points out that the staff of "CIA", Inc. includes former Government employees, including ex-Agency employees. In my view then, the letter alone would not constitute sufficient evidence to convict under Section 712. This does not mean, however, that there is no violation.

6. I have looked to see how "CIA" Inc. represents itself to the public through its listing in the Atlanta telephone directories. In the most current white pages there is a simple one line entry under its complete name, not under the initials "CIA". In the yellow pages there is a display advertisement (attached) under the Detective classification, which makes no mention of the initials "CIA" except to mention that some of its employees are "Ex-CIA Agents". There is a simple full name listing under the Guard & Patrol Service classification, and no listing under Investigators.

7. I have had name traces performed on the three officers listed in "CIA" Inc. letterhead. We have no record on the President or Executive Vice-President. I found that this Office was involved with Mitchell L. Werbell, III, probably the father of Mitchell L. Werbell, IV, listed as Vice-President. Apparently, Mr. Werbell, III was being prosecuted for participating in an abortive scheme to


invade the Republic of Haiti in 1966. Mr. Werbell claimed he was acting on behalf of the Agency. While he has voluntarily contacted the Agency on several occasions, he has never been an employee or otherwise paid by the Agency.

8. The Office of Security informs me that the initials C.I.A. have, in the past, been used by a number of organizations similar to that of the subject company. Specifically, we have records of Central Investigation Agency, Inc. (CIA) activities in Austin, Texas (1965), Evansville, Indiana (1968) and Alexandria, Virginia (1958). There is no indication that these organizations had any connection.

9. Based on the facts as outlined above I think that if the Government would attempt to prosecute "CIA" Inc. based solely on their letterhead, there is a good possibility that the Government would not obtain a conviction because of the difficulty of establishing, beyond a reasonable doubt, that the organization used the initials for the purpose of conveying, and in a manner reasonably calculated to convey, the false impression that such business was part of the U.S. Government. If this was the outcome, it would represent a strong precedent for others and would be a license for this organization to try to use the initials in a manner that might be even more misleading than it is today. Thus, I recommend that this Office express this opinion to the Department of Justice and request they investigate other representations of this organization to determine if more positive evidence exists as to whether there is an 18 U.S.C. 712 violation. If you agree, I will draft a response to the Department.

10. If stronger evidence does exist, we should then consider criminal prosecution as well as the civil remedy of Federal Trade Commission action. The FTC has the authority and has used it extensively in the past to issue orders prohibiting the use of business names calculated to lead the recipients of materials bearing such names into the belief that they emanated from the U.S. Government. Enforcement of such orders can be had under Section 5(1) of the FTC Act.

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Office of General Counsel

Att.

OGC:JED:cap

- 3 -

Original - OGC Subj: CRIMES

1 - JED Signer

1 - Chrono

OGC 74-⁶⁵²~~012~~

29 January 1974

Mr. Carl W. Belcher
Chief, General Crimes Section
Criminal Division
Department of Justice
Washington, D.C. 20530

Attention: Mr. John A. Wittmayer

Dear Mr. Belcher:

Re: Central Investigative Agency, Inc.
Possible violation of 18 U.S.C. 712
HEP:CWB:JAW:bk 108-19

Your letter of 15 January 1974 to the Acting General Counsel of this Agency requested thoughts as to whether there is a possible violation of 18 U.S.C. 712 by the Central Investigative Agency, Inc. in their use of the initials "CIA". It is our view; that while we would like to prevent the use of the initials "CIA" by organizations of this type, prosecution in this case would be difficult based solely on evidence in the letterhead that you brought to our attention. Section 712 requires that the use be for the purpose of conveying, and in a manner reasonably calculated to convey, the false impression that such business is part of the Government. In fact, the body of the letter points out that the staff of CIA, Inc. includes former Government employees, including those of this Agency. Thus, it seems to us that CIA, Inc. could make a convincing argument that the letter itself does not mislead.

Organizations of this type are not new. Our records indicate that organizations named Central Investigation Agency (CIA), Inc. have existed in Evansville, Indiana (1968), Austin, Texas (1965), and Alexandria, Virginia (1958). There is no indication that these organizations had any connection.

Based on these facts it is our view that an attempt to prosecute, based solely on the evidence in the letterhead, might fail. If it failed, we are of the opinion that it would represent a fairly strong precedent for others and would be a license for the subject organization to try to use the initials in a manner that might be even more misleading than it is today. Accordingly, we suggest prosecution not be undertaken unless more positive evidence exists as to whether there is a Section 712 violation.

Sincerely,

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Office of General Counsel

OGC:JED:cap

Original - Addressee

1 - OGC Subj: CRIMES

1- JED Signer

1 - Chrono

OGC 74-0165

29 January 1974

MEMORANDUM FOR: Chief, Administrative Staff, OJCS

SUBJECT: [REDACTED] - Conflict of Interest

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1. You have requested the opinion of this Office concerning a possible future conflict of interest involving an employee of your office, [REDACTED]

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25X1A 2. You advise that [REDACTED] husband, Robert, who is

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4. The law applicable to conflicts of interest is found in Title 18 of the U. S. Code, the criminal title. Therein, at Chapter 11, are the laws relating to bribery, graft and conflicts

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of interest. At Section 208 the following quoted portion seems applicable to [] case: 25X1A

... (W) however, being an officer or employee of the executive branch of the United States Government... participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, ... in a ... contract... in which, to his knowledge, he, his spouse, ... has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

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It would seem to the undersigned that if [] is employed by [], she, and to some degree her husband, would have a personal financial interest in the corporation, namely, her continued employment. This financial interest could directly affect [] activities on behalf of the Government.

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5. In addition, Executive Order 11222 of 8 May 1965, "Standards of Ethical Conduct for Government Officers and Employees," provides at Section 201(a) and (c):

(a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

and,

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels, or

25X1A (6) affecting adversely the confidence of the public in the integrity of the Government.

6. Ordinarily, a Government employee in a leave without pay status can accept a job with a commercial corporation such as [] However, where that corporation has substantial contracts with the employee's agency, we believe that, at the very least, an apparent conflict of interest in contravention of Executive Order 11222 exists. Where the employee's spouse, another employee of the Agency, is charged with supervising those Government contracts within the corporation, we believe the relationships are too close and that a very real conflict of interest results.

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5. Accordingly, on the facts presented, it is the opinion of this Office that the relationship of both employees in this case and the Government task to be performed by one of them, precludes [redacted] from accepting employment with [redacted]

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Assistant General Counsel

Att

GMB:ks

Distribution:

- Original - Addressee w/att and orig of incoming, OGC 74-0011
- 1 - CONFLICTS OF INTEREST w/cy incoming "
- 1 - GMB Signer
- ✓ - Chrono

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Next 3 Page(s) In Document Exempt

OGC 74-0201

4 February 1974

MEMORANDUM FOR: Director of Security

SUBJECT : Department of Justice Prosecution of
Unauthorized Possession of Classified
U.S. Government Documents

REFERENCE : Memo to General Counsel fr D/S dtd
25 Jan 74, same subj

1. Referent memorandum requested the opinion of this Office as to who would be the proper Agency official to testify as to the classification of certain Agency documents. The documents consist of three Intelligence Information cables produced in the Directorate of Plans in 1969.

2. The documents were originally classified under the authority of Executive Order 10501. However, that Order has been replaced by Executive Order 11652. The rules of procedure (Part 1900 of Title 32 Code of Federal Regulations) adopted pursuant to that Order specify that the responsible component--that Agency component having responsibility for the records or subject matter involved--makes the initial determination on requests for classified documents. While we recognize that this is not precisely the case here lacking further statutory or regulatory specificity on the question you ask, it is our opinion that the responsible component is the proper party. Thus, the Deputy Director for Operations would be the proper individual. Accordingly, we suggest the question be answered in the following manner: "The Deputy Director for Operations is prepared to produce his affidavit attesting to the classification." 25X1A



Office of General Counsel

cc: DDO

Next 1 Page(s) In Document Exempt

OGC:JED:cap

Original - Addressee 25X1A

1 - OGC Subj:

1 - JED Signer

1 - Chrono

OGC 74-0213

5 February 1974

MEMORANDUM FOR: C/Central Travel Branch, C & L Division

SUBJECT : Travel of Dependents of Retired Employees

REFERENCE : Your memo to OGC dtd 16 Nov 73, same subj

1. You requested the opinion of this Office concerning the travel entitlements of dependents of retired Agency employees. Your specific concern is with individuals who have attained the age of 21 at the time their travel is performed and who no longer qualify as a dependent under Headquarters Regulation

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2. An individual who, as a dependent, had his/her travel to a post abroad paid for by the Government (except for educational travel) may be authorized return travel at Government expense if the requirements of are met, or if the individual still qualifies as a dependent under . The actual return to the United States by the employee, the employee's dependents, and the transportation of all effects should begin within 12 months from the employee's last day in pay status. The Director of Personnel can authorize a delay in travel not to exceed 18 months. An individual who qualifies as a dependent on an employee's last day in pay status may be returned to the United States at Government expense even if the individual becomes 21 years of age between the retirement date and the date of departure. The individual must, however, meet the other requirements of dependent status on the date of departure.

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3. Employees who are stationed within the continental United States (CONUS) (the 48 contiguous states and the District of Columbia) at the time of their retirement are also allowed 12

(or 18) months after their last day in pay status to begin their retirement travel. An individual who qualifies as a dependent on an employee's last day in pay status, but who loses this status by becoming 21 years of age before his/her travel begins, is not entitled to travel at Government expense. The Government is obliged only to return these individuals to the United States from foreign posts. Such individuals located in the United States are "home" in a generic sense.

4. The undersigned has examined the Uniform State/AID/USIA Foreign Service Travel Regulations and has discussed this matter with Mr. George Jenkins of the Transportation Division, Bureau of Administration, Department of State. The opinion set forth above is consistent with the present practice of both the Agency and the Department of State.

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Office of General Counsel

OGC:AEG:cap

Original - Addressee

✓ 1 - OGC Subj: TRAVEL

1 - AEG Signer

1 - Chrono

11 February 1974

74-793
P

MEMORANDUM FOR: Deputy Director for Management and Services
Inspector General
General Counsel

INFORMATION : Deputy Director of Central Intelligence


SUBJECT : Increase in Minimum Amount for Which Receipts
Are Required

REFERENCES : A. Memo to DCI from IG dtd 25 Jan 74, Same
Subject
B. Memo to DCI from D/F dtd 17 Jan 74,
Same Subject

1. It seems to me that we went wrong originally in setting an overall minimum which does not exist in GAO regulations except with respect to travel. I do not approve raising the minimum for travel claims beyond the minimum set by GAO. With respect to other matters, I suggest that the best solution to the snarl we seem to have developed on this would be to eliminate our overall minimum of \$15.00 and, instead, adopt the precise wording and standards of the GAO, to include the \$15.00 minimum for travel. With respect to nontravel matters, the question would only be whether adequate documentation existed to meet GAO's standards. Obviously, the auditor would expect receipts wherever it seemed appropriate and reasonable but accept the other items discussed in the Office of Finance's memo where it would be reasonable not to have them. We of course have the extra escape valve that, in any situation justified by a specific operational situation, we can fail to meet the GAO standards. The \$15.00 minimum for travel, of course, suggests the GAO's concept of the point at which a requirement for a receipt becomes de minimus, although there is no flat limit set outside the travel area.

2. Would this be a satisfactory solution?

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W. E. Colby
Director

See OGC 73-2255, 6 December 1973, Permanent Record

OGC Subject-Accounting

Note - Reference B not available in OGC.

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25 JAN 1974

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Increase in Minimum Amount for
Which Receipts are Required

1. I have read the Director of Finance's memo recommending that you reaffirm the \$50.00 minimum for which receipts are required. I have also read the Chief, Audit Staff's memo arguing against it. Although I recognize that I have no expertness in this matter, it seems to me that as a matter of common-sense I cannot agree with Finance's position. My reasoning runs as follows:

25X1A a. [] says our disbursements are supported by a GAO-acceptable basic payment document, i.e., a claim by an employee, certified by an Approving Officer, with a signature by the employee acknowledging receipt of the money.

b. He questions the need for further support in the form of receipts and points to the time and labor required to obtain, process, and retain them.

c. He regards the review and certification by the Finance Officer as confirming the transaction.

d. [] believes that the GAO in talking about basic payment documents means invoices, bills, or statements of account, not internal certifications.

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e. I feel the chain of claim, certification and signature is incomplete and leaves the whole question of what the case officer did with the money up in the air. All that the finance officer can certify to is that a claim was made, it fell within the ground rules, and he passed the money to the case officer who signed for it. It seems clear to me that receipts are a necessary part of the chain of evidence.

f. While it may be true as Finance seems to infer that receipts are, or could be, of doubtful validity, I believe that if an officer is engaged in questionable practices, it is in the receipt business that he is apt to make mistakes - wrong dates, duplications, errors of one sort or other.

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g. [] also infers a manpower saving. I don't see any slots offered up.

2. I again recommend that you drop back to the previous \$15.00 limit, and would like to point out that I know of no other government agency which uses the practice that the Director of Finance is recommending.

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[]

Inspector General

cc: DDM&S
Director of Finance
OGC

CONFIDENTIAL

OGC 74-0255

13 February 1974

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MEMORANDUM FOR: , OMS

SUBJECT : Practice of Medicine in Virginia

1. It is understood that the Office of Medical Services (OMS) is interested in obtaining the services of a medical doctor-psychiatrist as a consultant to OMS. It is also understood that the psychiatrist will interview persons of interest to the Agency and will diagnose their condition but will not prescribe medicine or treat them. This activity will take place in Virginia, but the psychiatrist is not licensed to practice medicine in Virginia. It is understood that the prospective consultant resides in and is licensed to practice medicine either in Maryland or in the District of Columbia.

2. The undersigned is of the opinion that the psychiatrist is entitled to practice medicine in Virginia; provided, he complies with the conditions set forth in Section 54-274 of the Code of Virginia, and he files with the Virginia State Board of Medicine evidence of his right to an exemption from the Virginia licensing requirements.

3. As you requested, copies of pertinent Sections of the Code of Virginia are attached.

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Office of General Counsel

Att. as stated & Sections 54-275, 54-276.5, & 54-310

OGC:AEG:cap

Original - Addressee

1 - OGC Subj: MEDICAL

1 - AEG Signer

✓ - Chrono

Next 1 Page(s) In Document Exempt

14 February 1974

MEMORANDUM FOR: Chief, Budget and Finance Division,
Office of Special Activities

SUBJECT: Claim for Emergency Travel Expenses of
Dependent Wife and Son of [redacted]

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1. A claim has been submitted by [redacted] USAF, for reimbursement of expenses totaling \$1,201.80, incurred by his wife and infant son in September - October 1971 while on emergency travel to visit her dying mother and critically ill father. At that time, [redacted] who was a detailed military employee stationed in [redacted] assigned to the Office of Special Activities, was unaware that he could have been authorized emergency visitation travel under CIA regulations. Thus, he attempted to obtain space available accommodations on military air transportation on 16, 17, 18, 19 and 20 September 1971, but was unsuccessful because of lack of space and weather (typhoon) conditions. [redacted] was initially notified that his wife's mother was dying on 16 September and the situation became even more urgent on 19 September, when he was notified that his wife's father had suffered a stroke and was also critically ill. In these circumstances [redacted] decided he could not wait any longer for military air transportation and proceeded to purchase commercial air tickets for his wife and son at his own expense. When he became aware that the Agency would have authorized this travel had it been requested to do so, he submitted his claim for reimbursement on 8 February 1973. [redacted] is still on military detail with the Agency.

2. It is general Agency policy that military personnel detailed to CIA for duty may receive travel benefits substantially similar to

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25X1A civilian employees at the discretion of the operating official concerned. See [redacted] Under the provisions of [redacted] civilian employees and eligible dependents may be authorized emergency visitation travel from a duty post outside the continental United States when there is a serious injury or illness or death in the employee's or eligible dependent's immediate family.

3. In view of the fact that a civilian employee would have been authorized emergency visitation travel in the circumstances presented in the instant case, there appears no legal objection to reimbursing [redacted] for expenses incurred for emergency visitation travel of his wife and infant son in 1971. It is noted also that the Chief, Personnel Division, Office of Special Activities, in a memorandum dated 18 October 1973, has recommended that [redacted] request for reimbursement of emergency travel expenses be approved.

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[redacted]
Assistant General Counsel

Att: Background Material, OSA-2236-10-73

JGB:ks

Distribution:

- Original - Addressee w/background material, OSA-2236-10-73
- 1 - CLAIMS w/incoming memo, OGC 73-2174
- 1 - JGB Signer
- 1 - Chrono

OGC 74-0280

14 February 1974

25X1A

MEMORANDUM FOR: [REDACTED]

THROUGH : Chief, Division D

SUBJECT : Conflict of Interest

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1. You have requested the opinion of this Office concerning a possible future conflict of interest should you accept a position with [REDACTED] immediately upon your formal retirement. [REDACTED] manufactures and sells to the Agency and to other U.S. Government organizations electronic and communications intercept equipment. You state that you wish to accept a position as a salesman-consultant with [REDACTED]. As part of your work, you will represent [REDACTED] in its business dealings with the Agency. It should be noted that [REDACTED] is only one of several companies which manufactures and sells this type of equipment to the Agency. You estimate your retirement date to be 15 March 1974. Since 1 April 1973, however, you have been on sick leave.

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2. The law applicable to conflicts of interest is found in Title 18 of the U.S. Code, the criminal title. Therein, at Chapter 11, are the laws relating to conflicts of interest. At Section 207, the following quoted portions could be applicable to your case:

(a) Whoever, having been an officer or employee of the executive branch...after his employment has ceased, knowingly acts as agent...for anyone...in connection with any...contract,...or other particular matter...in which the United States is a party...and in which he participated personally and substantially as an...employee, through decision, approval, recommendation, the rendering of advice, investigation, or otherwise, while so employed or

[REDACTED]

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any...agency...as agent,...for, anyone other than the United States in connection with any...contract,...in which the United States is a party...and which was under his official responsibility as an...employee...at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both:....

3. It is understood that from about 1963 to 1970 you were responsible for developing and planning clandestine technical collection operations and that you had responsibility for developing requirements for new equipment. These requirements were relayed by you to the Offices of Communications and Technical Services which in turn either purchased equipment or negotiated with manufacturers to develop equipment which met your requirements. You state that you were never a contracting officer and presumably had no direct involvement in the selection and purchase of the equipment.

25X1A 4. It is also understood that during your assignment to Division D you were involved in laboratory and simulated operational testing of technical collection equipment. Once again, you were not involved in contract negotiations or discussions with respect to procurement actions or contractual changes. According to your supervisor in Division D, [] you were never in a position to accept or reject equipment or to negotiate or monitor contracts. [] also stated that your knowledge of Agency requirements in the field of technical collection equipment would not give [] a competitive edge over other manufacturers.

5. After a thorough review of the facts, the undersigned is of the opinion that the above-quoted portions of Section 207 are not applicable in your case. Therefore, there appears to be no legal

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objection to your selling technical collection equipment to the Agency as a representative of . You should not, of course, permit your status as a former employee to influence the Agency to purchase such items.

6. The conclusions reached in this case should not be used as precedent in any other because cases concerning conflicts of interest are decided on the facts peculiar to each.

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Office of General Counsel

OGC:AEG:cap

Original - Addressee

1 - AEG Signer

1 - OGC Subj: CONFLICT OF INTEREST

✓ - Chrono

CONFIDENTIAL

OGC 74-0304

19 February 1974

MEMORANDUM FOR: Chief, SB/SA

SUBJECT : Crediting Employment at U.S. Army Office
25X1A for Creditable Service Purposes in the
CIA Retirement and Disability System--

[REDACTED]

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1. Ms [REDACTED] requested the opinion of this Office as to whether the employment of [REDACTED] at the U.S. Army Office in Munich, Germany, during the period 1946 to 1950 qualifies as creditable service under the CIA Retirement and Disability System (CIARDS). For the reasons discussed below, it is our opinion that the period from January 1948 to March 1950 may be credited, but the service prior to 1948 may not be credited.

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2. Documents furnished by [REDACTED] disclose that from October 1946 to December 1947 Mr. [REDACTED] was employed by Headquarters 2d Constabulary Brigade, APO 407-A, U.S. Army, Office of the S-2 as a Special Investigator. Beginning in December 1947, 25X1A [REDACTED] was employed by Headquarters, Munich Military Post, S-2 Section, APO 407-A, U.S. Army, as Chief Investigator and Supervisor of non-American Investigators. In February 1950, [REDACTED] was hired by the Agency.

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3. It is our understanding that [REDACTED] is a participant in the Agency's retirement system (CIARDS). With respect to CIARDS, you will note that [REDACTED] states:

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Insofar as practicable, pertinent rulings of the Civil Service Commission under the Civil Service Retirement Act will be used as a guide to determi-

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CL BY 058473

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nations regarding the creditability of any military service and of civilian service performed prior to designation as a participant.

25X1A I discussed how the Civil Service Commission (CSC) rules on matters such as the instant case with Mary Chinchaeck (code 101-24636) of the Bureau of Retirement, CSC. She noted that one requirement of the three-part test of Federal employment (5 U.S.C. 2105) is an appointment to the Civil Service. She stated, however, that there are really no standards established in the Bureau that can be used in a case such as this one. The Bureau considers each case individually and requests the employing department or agency to make the determination as to whether Federal employment did in fact exist. Therefore, as Mr. [] was not an employee of the Agency during the time in question, the Agency should look to his former employer's determination to determine what, if any, portion of the time qualifies as creditable service.

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4. In April 1969, through CSC, the Agency requested the National Personnel Records Center (NPRC) in St. Louis, Missouri, to search their files for any records regarding [] employment. They replied that:

25X1A No record of employment with the U.S. Government was found. It appears the employment was through an 'indirect hire'. 'Indirect hire' employment resulted from a labor service agreement between the U.S. and certain foreign countries. Under this agreement, local nationals were recruited, hired and paid by the host government and placed in U.S. civilian positions. The U.S. in turn reimbursed the host government for the salaries paid such employees. It is our understanding that persons employed under the indirect hire system are in fact, employees of the host government and not the U.S. We receive no records pertaining to this type of employment.

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In May 1969 a search was made of Army records in Munich regarding [] The local personnel office had no record of []

- 2 -

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except to note that he "...was initially hired by Army as a CIC Investigator..." We also learned during that inquiry that all wage and salary cards previously held in Munich for the period of employment in question have been destroyed.

25X1A 5. Discussions with the Office of the Deputy Chief of Staff for Personnel, Department of Defense, reveal that their records with respect to locally hired non-U.S. citizens are maintained at the location of employment, and not forwarded to the U.S. Further, they explain that through 1947 Displaced Persons--which [] was--working for the U.S. Government in Germany were paid from funds chargeable to reparation payments under authority of Letter ETOUSA 13 June 1945, [] Subject: Administration and Pay for Civilian Labor in Germany. However, after 1947, such persons became contract employees of the Department of the Army.

6. In support of his claim, [] has submitted a number of copies of letters from supervisors which support his allegation of employment by the Army. CSC takes the position that before it can consider such "secondary evidence", it must be shown that the alleged service cannot be verified from official records because of the loss, destruction, or incompleteness of such records. Affidavits cannot be accepted to controvert established records. As there is an indication that the records at the NPRC may be incomplete, and as it appears that the records that were previously maintained in Germany have been destroyed, it is our opinion that the secondary evidence should be examined.

7. An examination of the secondary evidence shows the following:

a. In a document signed by the Municipal Administrator Senior Inspector dated 23 January 1947 from the Municipal Council of the Land Capital Munich Central Pay Office for Civilian Employees of the 3rd Army in the Urban area of Munich to [] it is stated: "In accordance with the ordinance of the Bavarian Minister-President of 16 July 1945, you will receive on the basis of your employment as an employee of the Occupation Forces... from 14 November, 1946... the following compensation..."

25X1A b. In a letter dated 1 December 1947 from Major T. J. Camp, U.S. Army, it is stated that [redacted] has worked for this office /S-2/ during the past 15 months...."

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c. In a letter dated 10 January 1949 from Emile G. Speeger, DAE, Chief of Section, it is stated that "[redacted]" as been employed by the U.S. Forces for a period of 2 1/2 years...."

d. In a letter dated 1 June 1949 from Major Lewis A. Fletcher, U.S. Army, it is stated that "[redacted]" has been an employee of the S-2 Section, Munich Military Post, since December 1947."

25X1A 8. It is not clear from these documents that the writers have distinguished between the technical and legal meaning of employment and a rather broad and general meaning of the term. In fact, it appears that the distinction was not made as a literal interpretation of these documents contradicts the information furnished by the Department of Defense. Thus, these documents are little help in establishing whether or not [redacted] was actually a U.S. Government employee or merely an employee of another organization, working in a U.S. Government office. While the distinction is obviously a technical one, it goes to the heart of the matter in this case. Therefore, lacking official records which could resolve this technical distinction, it is the opinion of this Office that, while the time beginning in January 1948 may be credited for retirement purposes based on the information supplied by the Department of Defense, time prior to this date may not be credited.

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25X1A 9. On 19 February 1974 Mr. [redacted] and I met with Mr. [redacted] to explain the above to see if he had other evidence that should be considered. He knew of nothing else in his possession that could support his claim; however, he asked that he be permitted to search for additional evidence. I assured him that we will reconsider the 1946-1947 period if other evidence regarding this period is produced.

10. Returned herewith are the documents you furnished relating to Mr. [redacted] employment.

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Office of General Counsel

cc: C/CCS
D/Pers

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Next 2 Page(s) In Document Exempt

OGC 74-0355

22 February 1974

MEMORANDUM FOR: Chief, WH Support

THROUGH: Director of Personnel

25X1A

SUBJECT: Creditable Service - [REDACTED]

REFERENCE: Your memo dtd 24 Jan 74, same subj

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1. At your request, this Office has reviewed our opinion of 13 March 1963 (OGC 62-1702(a)) which denied Mr. [REDACTED] claim for creditable service for retirement and leave purposes for the period 15 May 1952 to 28 November 1952.

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25X1A During that time, [REDACTED] was employed by [REDACTED]
[REDACTED], an Agency proprietary, hereinafter referred to as

25X1A [REDACTED]

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25X1C 2. When Mr. [REDACTED] was hired by [REDACTED], he was unwitting of its involvement with the Agency. [REDACTED] was

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Mr. [REDACTED] was a bookkeeper and administrative assistant in the [REDACTED] office in [REDACTED]. His files indicate that he performed very professionally during the period of his employment as an unwitting hire, and he was converted to staff status on 28 November 1952. The facts reveal that he was the only unwitting employee in the office so that he was hired and supervised by Agency personnel.

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3. In OGC 74-0304 dated 19 February 1974, OGC 74-0206 dated 4 February 1974, and OGC 73-0764 dated 2 May 1973, this Office discussed certain tests which, if met, would permit a determination that employment by a proprietary could later be credited toward retirement.

4. These tests may be summarized as follows:

(a) The proprietary must have been engaged solely in Agency business;

(b) The proprietary must not have developed any good will with others, which would constitute a marketable asset if the proprietary were liquidated;

(c) The sole purpose of the proprietary was to do what the Agency would otherwise do if cover and security were of no concern;

(d) The proprietary hire performed identically to that of a Government employee, the difference being in name only; and,

(e) The requirement that there must be an appointment to the Civil Service (5 U.S.C. 2105) is met.

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5. Applying these tests to the facts in the instant case, the following conclusions can be reached. [] was engaged solely in Agency business and developed no good will which was marketable as an asset. Moreover, the sole purpose of [] was to do what the Agency could not itself do because of cover and security reasons. Therefore, the tests of (a), (b) and (c) set forth above are fully met.

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6. The final two tests deal with the activities of the employee rather than of the proprietary and are closely related. A review of Mr. [] file leaves little doubt that he performed identically to that of a Government employee. In fact, the evidence

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shows that the only reason he was not given staff status immediately upon being hired was his lack of a security clearance.

His supervisor at [] requested processing of a security clearance on 19 June 1952, less than a month after

[] was hired. As soon as the clearance was approved, [] was converted to staff status. Additional evidence

that he was considered an Agency employee during his tour with [] is provided in a qualification record report which

lists his employment from "May 1952 - September 1953" as

"Administrative Assistant-[] in charge of management of a [] office. Taken as a whole, the record leaves little

doubt that the requirement of test (d) above has been met.

7. In OGC 74-0304, referred to above, the question of appointment to the Civil Service was discussed with the Bureau of Retirement, Civil Service Commission (CSC). We were advised that the Bureau considers each case individually and requests the employing department or agency to make the determination as to whether federal employment did in fact exist. On the basis of the circumstances in this case, as discussed above, it is our opinion that federal employment did exist during the period [] was employed as a proprietary hire with []

8. For these reasons, OGC 62-1702(a) is modified to permit creditable service for retirement and leave purposes for the period Mr. [] served in [] as an unwitting employee, that is, 15 May 1952 to 28 November 1952.

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Assistant General Counsel

cc: D/Personnel

JGB:ks

Distribution:

Orig - Addressee

1 - RETIREMENTS w/incoming, OGC 74-0156

1 - JGB Signer

✓ - Chrono

3

CONFIDENTIAL

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OGC 74-0301

25 February 1974

MEMORANDUM FOR: Chief, East Asia Support

SUBJECT : Dependent Benefits -- Divorce Cases

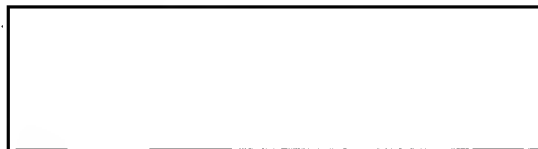
REFERENCE : Your memo dtd 12 Feb 74, same subject

1. Your memorandum asks this Office to decide whether in certain situations an employee could be entitled to dependent benefits and allowances notwithstanding the employee's divorce. It is understood that both situations you pose may not exist. In effect, you are asking this Office for an advisory opinion. This Office finds it unwise to render advisory opinions on questions of travel and allowances, particularly where, as in this matter, the regulations are relatively clear and where this Office has rendered other opinions concerning the travel of and allowances for the children of divorced employees. An opinion by this Office on the questions you ask could be subject to misinterpretation by employees in other factual situations which this Office may have no knowledge of or which this Office may never have been asked to rule upon.

2. Consistent with Comptroller General rulings and Government travel law in general, this Office has ruled that the travel costs for an employee's children to visit him and to return to their place of residence with the other parent may not be paid in those instances in which the children are in the custody of and reside with the other parent. Agency regulations require that in order to be part of an employee's family an individual must be a dependent and must reside with the employee, except in certain circumstances not applicable here.

3. It should be noted that Agency regulations concerning the dependent benefits and allowances in question originate in the Standardized Regulations (Government Civilians, Foreign Areas) issued by the Secretary of State under authority delegated to him by the President. The Standardized Regulations provide that the head of an agency may grant differential, quarters, cost-of-living, and representational allowances to employees of his agency and that he may grant (under certain conditions) special allowances in addition to or in lieu of those authorized in the Standardized Regulations. The grant of these allowances is discretionary and not mandatory. Therefore, if a decision were made that an individual was attempting to create a subterfuge and thus take unfair advantage of the Agency, the individual could be denied the allowances in question. Such a decision would probably not be made by this Office.

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Office of General Counsel

OGC:AEG:cap

Original - Addressee

1 - OGC Subj: TRAVEL

1 - AEG Signer

✓ Chrono

OGC 74-0347

25 February 1974

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MEMORANDUM FOR: SSA-DDM&S

SUBJECT:

Claim for Real Estate Expenses Under
OMB Circular A-56--

REFERENCES:

(a) Memo to SSA-DDM&S fr D/Commo dtd
31 Jul 73, Subj: Reimbursement of Real
Estate Expenses in Connection w/Domestic
Transfer-Mr. OC-M-73-437

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(b) Memo to D/Fin fr DSSA-DDM&S dtd 2 Aug
73, same subj

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(c) Memo for Hubert Lacey fr OGC/
dtd 15 Aug 73, same subj

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(d) Memo for DSSA-DDM&S fr D/Fin dtd
22 Aug 73, same subj

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(e) Memo for DSSA-DDM&S fr OGC/
dtd 4 Sep 73, same subj

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(f) Memo for DDM&S fr D/Commo dtd 30 Oct
73, same subj

(g) Memo for OGC fr DSSA-DDM&S dtd 1 Nov
73, Subj: Claim Under OMB Circular A-56,
OC

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1. Citing Comptroller General Opinion B-168818 of 9 February
1970, references (f) and (g) request another review of subject claim
which was originally decided by reference (c) and reinforced by

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reference (e). In addition, reference (f) cites certain additional facts which it is believed support the request for another review and a recommendation favorable to [redacted]. Regrettably, it is the opinion of this Office that references (c) and (e) are correct statements of the law applicable to Mr. [redacted] claim and that neither the cited Comptroller General opinion nor the new facts invalidate those statements.

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2. The facts as gleaned from references (a) and (f) are as follows: Mr. [redacted] was assigned PCS Headquarters to [redacted] in August 1969 and from that date until May 1970 he rented his house in Virginia. In June 1970 a new lease was signed with new tenants. Mr. [redacted] was then returned short of tour PCS [redacted] to Headquarters the next month, July 1970, and rented another house as quarters for his family. In June 1971 [redacted] told his tenants that they would have to vacate at the end of their lease period, 30 June 1971. Prior to that date, however, the tenants had a marital breach with the husband deserting. At some point in time he returned but the family did not finally vacate the house until May 1972. Reference (a) states that Mr. [redacted] repeatedly requested that the family move but that he took no legal steps in that regard in deference to the family's marital problems. [redacted] was "verbally" and "informally" told of his pending assignment PCS to [redacted] in "early May" 1972, the actual transfer being effective 3 January 1973. It is stated that because of "the short time period involved and because of moving and lease breaking expenses" he did not move back into the house he owned, left it vacant and "chose to remain in rented quarters." However, had he been told that occupancy of the house to be sold was a requirement for reimbursement, "he most certainly would have moved back into his vacant residence." The house was eventually sold on 25 January 1973.

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3. First, on the question of fact--Mr. [redacted] being told or not told that he had to occupy the house to be sold--we would advise as follows. So far as can be determined, there is no legal or equitable responsibility on a Government agency or its officers to guide other officers in the handling of their personal affairs so as to maximize travel and related entitlements. Rather, it would seem, the

CONFIDENTIAL

responsibility of the Government agency is simply to take the facts as it finds them and measure them against applicable laws and regulations to determine allowance entitlements. Even if the reverse were true, there is nothing in the record which indicates that any Agency officer who dealt with [] was aware he was not occupying the house and in fact, according to reference (f), the question was not even raised until March 1973 when Mr. [] was filling out Form 3162 and certifying the house, to wit: "...and was my residence when first definitely informed of my transfer."

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4. Second, on the cited Comptroller Decision (copy attached), we believe that the facts are clearly distinguishable and do not apply to []'s case. The Comptroller General permitted reimbursement of real estate expenses of a Secret Service Agent on the following facts. The Agent contracted on 12 May 1969 to purchase a residence and put down a deposit equal to ten percent of the sales price. On 18 July 1969 he was notified that he was being transferred and he "executed the necessary documents," believing that he could get out of the house contract. However, when his attorney advised that he was bound to complete the contract, he purchased the residence on 15 August 1969 and sold it on 20 August 1969 having never lived in it. The Comptroller General's reasoning was as follows:

Section 4.1d of Circular No. A-56 requires that the dwelling at the old official station be the employee's actual residence at the time he was first definitely informed that he was to be transferred to a new official station. Ordinarily that requirement would appear to preclude any reimbursement of selling expenses of a house not used as a residence. However, our view is that the regulation was not intended for application in a situation such as here. That is, where the employee has in good faith entered into a contract for the purchase of a residence at his old duty station prior to receiving his transfer order is unable to cancel the purchase contract and is precluded from establishing his residence in the house because of a transfer. (Emphasis added.)

CONFIDENTIAL

OGC 74-0365

option the

28 February 1974

ILLEGIB

MEMORANDUM FOR: Executive Officer, OSA

SUBJECT : Government Use of Motorbikes
as Official Vehicles

ILLEGIB

1. You requested the opinion of this Office as to the legality of OSA's use of motorbikes currently in your possession to supplement the use of one Government automobile that is currently assigned to OSA. You explained that the use of these vehicles would be particularly advantageous during this time of gasoline shortage. It is our understanding that the two motorbikes involved would be primarily used during good weather and for a number of purposes such as (a) courier travel between your location in Virginia and Headquarters, the Pentagon, State Department, etc., and (b) in lieu of some of OSA employees' use of their privately owned vehicles for local official travel.

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2.

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Executive Order

10597 (1954) established policies and procedures under which inter-agency motor vehicle pools or systems are governed. Section 9(2) of that Order exempts from the provisions of the Order any vehicle regularly used by an agency in the performance of its intelligence duties; however, vehicles used for common administrative purposes not directly connected with intelligence duties are not exempted. The Order also exempts any motor vehicle, the conspicuous identification of which as a Government vehicle, would interfere with the purpose for which it is acquired and used, special purpose vehicles, and any vehicle that the Administrator, GSA, and the head of the agency concerned agree not to include in the system. We are not

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aware of any circumstances that would qualify the motorbikes you propose to use from exemption from the Order. If circumstances do develop, however, which require an exemption the matter should be reconsidered at that time. Therefore, it is our opinion that the licensing and use of the motorbikes should follow the same guidelines that apply to the Government automobile that you currently use. It is our understanding that Government license tags can be issued to the subject vehicles notwithstanding the fact that the title to them is held by the Agency. Further, the insurance considerations associated with these vehicles would be no different from current practice--the Government would be a self-insurer for these vehicles as it is for its automobiles.

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3. [] assigns the function of providing vehicular support within the Washington, D.C. metropolitan area to the Director of Logistics. Logistic regulations regarding Motor Vehicles and Official Transportation in the Metropolitan Washington Area are found in [] respectively. Our review of [] did not reveal anything that would legally preclude what you propose. Note, however, that [] requires that Agency vehicles shall be operated only by individuals licensed in accordance with local legal standards. All jurisdictions within the Washington metropolitan area require a special operator's permit for motorcycles. For example, in Virginia, practically all operators, except nonresidents licensed under the laws of their home state, must obtain a special license to operate a motorcycle. Specifically, section 46.1-370.1 of the Code of Virginia states that no person--with the exceptions just mentioned--shall operate any motorcycle in Virginia unless such person has passed a special examination (written and road test) pertaining to the ability of such person to operate a motorcycle (any motor vehicle of three wheels or less which these motorbikes are) with reasonable competence and safety. Further, the Code specifies a number of other requirements for the operation of a vehicle of this type such as the use of safety helmets and glasses (§ 46.1-172).

4. While there is no specific legal prohibition to the proposed activities, there are obviously serious policy considerations involved. As mentioned above, the Director of Logistics has certain responsibilities relating to this activity; thus, we are forwarding a copy of this opinion to him. Further, as the Director of Security has certain responsibilities for employee occupational health and safety [redacted]

[redacted] we are forwarding a copy of this opinion to him.

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[redacted]
Office of General Counsel

cc: D/L
D/S

OGC:JED:cap

Original - Addressee

1 - OGC subj: TRANSPORTATION

1 - JED Signer

✓ - Chrono

CONFIDENTIAL

OGC 74-0433

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11 March 1974

MEMORANDUM FOR: SSA/DDM&S

SUBJECT: Shipment of POV In Connection With
Domestic PCS MoveREFERENCE: Memo for SSA/DDM&S fr Chief, Foreign
Resources Division, Subj: Shipment of
POV - [REDACTED] - Foreign
Resources Division, dtd 26 Feb 74

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1. You have given this Office a copy of referent memorandum and orally asked that you be advised if the requested shipment of POV contained therein is permissible under existing authority. The undersigned has researched the applicable law and regulations and regrets to advise that shipment of a POV in connection with a domestic PCS move such as described in referent memorandum would be subject to legal objection.

2. As you know, for domestic moves the Agency generally follows the authorities available to other Government agencies even though specifically exempt therefrom. In this regard, the Agency adopted the authorities of OMB Circular A-56 [REDACTED] Att. 3), which has now been superseded and its authorities collated with others into the "Federal Travel Regulations" (FTR) effective 1 May 1973. In addition to A-56, the new FTR's encompass the authorities previously published as OMB A-7, A-48 and Executive Order 8557. Excluded from the application of the FTR's are "Officers and employees transferred in accordance with the provisions of the Central Intelligence Agency Act of 1949, as amended." FTR 2-1.2(b)2. Of course, the travel available within the CIA Act is solely travel "outside the several states of the United States of America, excluding Alaska and Hawaii, but including the District

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of Columbia," Sec. 4. Thus, for domestic moves, the Agency has followed A-56 and now follows the new FTR's.

3. At Part 10 of the FTR there is provision for the shipment of POV but only to, or between, official duty stations outside the conterminous United States (forty-eight states plus D.C.). FTR 2-10.2(a). In addition under the definitions section, automobiles are specifically excluded from being considered as household goods, thus precluding shipment under that theory.

4. There are very few references to shipment of POV's, and I felt that there must be some decisions on the question you present. Accordingly, I called the General Accounting Office to inquire about the question in general and my concern for the absence of decisions in particular. I spoke with a Mr. Roney, Index Digest Section, Office of General Counsel, GAO, who stated flatly that there is no authority to ship an automobile in connection with a domestic PCS move. In addition, the reason there are no decisions on the question is because it is so clearly settled. He did indicate that since the advent of the energy shortage, the question had been put to him on a number of occasions, but the answer is still no.

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6. Accordingly, on the facts presented and the law and regulations herein cited, it is the opinion of this Office that the Agency may not pay for shipping the POV between domestic posts of assignment.

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Att: Ref.
GMB:ks

Assistant General Counsel

Original - Addressee

1 - TRAVEL w/cy ref, OGC 74-0379

1 - GMB Signer

1 - Chrono

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14 March 1974

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Inquiry from Senator Proxmire Regarding
Legal Basis for Covert Action and GAO
Audit of CIA

1. On 24 January 1974, Senator Proxmire wrote Elmer Staats, Comptroller General, requesting the latter's opinion on several matters relating to the Intelligence Community in general and CIA specifically. Among other things, Senator Proxmire asked the Comptroller General to provide an opinion on the legality of the National Security Council directing the Intelligence Community in part or whole to engage in covert activities abroad. Senator Proxmire also inquired as to the statutory authority of the GAO to review, audit or otherwise examine the programs and operations of the various intelligence agencies and what success the GAO has met with obtaining information from and about the Intelligence Community.

2. We have drawn together appropriate materials from our files and from the archives and have prepared memoranda on the legal basis for covert action and the history of the audit arrangements between GAO and CIA. These two memoranda are available in our files for whatever use you may have in response to Senator Proxmire's inquiries or otherwise.

JOHN S. WARNER
General Counsel

cc: DD/O
DD/M&S

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Distribution:

Orig: OLC

1 - OGC SUBJECT CIA ACTS AND STATUTES

1 - OGC Chrono c.r. ACCOUNTING GAO Audit

6 February 1974

MEMORANDUM FOR: General Counsel

SUBJECT: Legal Basis for Covert Action

REFERENCES: Noted on Page 3 and attached

1. There is no specific statutory authorization for the Agency to conduct non-intelligence related covert activities. Nor, however, is there any statutory prohibition against the conduct of such activities except to the extent, if any, that the prohibitions of the Neutrality Acts, 18 U.S.C. Chapter 45, against performance of certain acts by persons within the United States might be deemed applicable to such activities in particular circumstances.

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3. A statutory basis for covert action is unnecessary, however, because there is ample Constitutional authority for such activities. The President, with his responsibility for the conduct of foreign

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relations, as Commander in Chief of the Armed Forces (U.S. Const. art. II, sec. 2), and with the powers inherent in the Presidency, has authority to take such executive action as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid laws of the land. See New York Times Co. v. United States, 403 U.S. 713, 727 (Stewart, J., concurring). The inherent powers of the President to maintain effective control of international relations do not "depend upon the affirmative grants of the Constitution," but are "necessary concomitants of nationality." United States v. Curtiss-Wright Corp., 299 U.S. 304, 318; Burnet v. Brooks, 288 U.S. 378. "The very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations...does not require as a basis for its exercise an act of Congress", although, like all governmental powers, it must be exercised in subordination to any applicable provisions of the Constitution. United States v. Curtiss-Wright Corp., supra, at p. 320.

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5. Congress as a whole knows generally that a portion of the money appropriated for CIA goes for covert activities, although knowledge of specific activities normally is restricted to members of the subcommittees of the Armed Services and Appropriations Committees of both houses. It is well established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action. Brooks v. Dewar,

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313 U.S. 354, 361; Fleming v. Mohawk Co., 331 U.S. 111, 116;
see also Ivanhoe Irrig. Dist. v. McCracken, 357 U.S. 275, 293-294.

6. Because the requirement for confidentiality in the conduct of international affairs (New York Times Co. v. United States, supra, at 728) necessarily prevents Congress from making detailed appropriations for clandestine activities of the Agency, the general knowledge of the Congress, and the specific knowledge of responsible committee members regarding appropriations for CIA are sufficient to amount to Congressional approval of such activities.

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Office of General Counsel

Atts: References

- (a) Memo for DCI fr LRH dtd 15 Jan 62, Subj: Legal Basis for Cold-War Activities
- (b) Legal Memorandum Prepared by O/Legislative Counsel, Department of Justice, dtd 17 Jan 62, Subj: Constitutional and Legal Basis for So-Called Covert Activities of the Central Intelligence Agency

Distribution:

- 1 - OGC SUBJ: CIA ACTS AND STATUTES
- 1 - Chrono

SECRET

OGC 62-0033

15 January 1962

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Legal Basis for Cold-War Activities

1. This memorandum is for information.
2. I discussed with Nicholas deB. Katzenbach, Assistant Attorney General, Office of Legal Counsel, Department of Justice, the points raised by Senator Eugene J. McCarthy concerning the juridical or constitutional right of CIA to carry out covert activities directed towards the imposition of a particular line of political thought on a foreign country. The President, with his responsibility for the conduct of foreign relations, as Commander in Chief of the Armed Forces, and with the powers inherent in the Presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid law of the land.
3. There are no general prohibitions in law on cold-war activities of a covert nature, although there are laws limiting such specific acts as mounting military expeditions within this country against a foreign sovereign. It would appear, therefore, that cold-war activities not involving an act of war and not within such legal limitations would be within the executive prerogative.

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7. It can be said the Congress as a whole knows that money is appropriated to CIA and knows that generally a portion of it goes for clandestine activities. To this extent, we can say that we have congressional approval for those activities but we cannot say that we have general congressional approval for any specific activity as the knowledge is restricted to the group specified above and occasional other congressmen briefed for specific purposes. It is for the Executive Branch to determine the nature and extent of these activities and how they should be conducted.

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S/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

OGC:LRH:jeb

Orig-DCI (including in confirmation briefing book)

lcc-OGC/LC (confirmation briefing)

lcc-OGC (confirmation briefing)

lcc-OGC subject Intell Activities

lcc-OGC chrono

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17 January 1962

COPY

Memorandum Re:

Constitutional and Legal Basis for So-Called
Covert Activities of the Central Intelligence Agency.

This memorandum will discuss the constitutional and legal authority for the Central Intelligence Agency to engage in covert activities directed towards the imposition of a particular line of political thought on a foreign country. It is understood that certain cold-war activities of a covert nature, such as "black" propaganda, commando-type raids, sabotage, and support of guerrilla activities, have been engaged in by CIA almost from its inception, pursuant to an express directive of the National Security Council, and that the Congress has repeatedly appropriated funds for the support of such activities.

I. Constitutional Powers of the President.

"As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations." Burnet v. Brooks, 288 U.S. 378, 396. These powers do not "depend upon the affirmative grants of the Constitution," but are "necessary concomitants of nationality." United States v. Curtiss-Wright Corp., 299 U.S. 304, 318.

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"In the preservation of the safety and integrity of the United States and the protection of its responsibilities and obligations as a sovereignty" the constitutional powers of the President are broad. 30 O.A.G. 291, 292. "The very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations . . . does not require as a basis for its exercise an act of Congress", although, like all governmental powers, it must be exercised in subordination to any applicable provisions of the Constitution. United States v. Curtiss-Wright Corp., supra, at p. 320. His duty to take care that the laws be faithfully executed extends not merely to express acts of Congress, but to the enforcement of "the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all of the protection implied by the nature of the government under the Constitution." In Re Neagle, 135 U.S. 1, 64. (1890).

Examples of the exercise of these broad powers are numerous and varied. Their scope may be illustrated by the following: The President may take such action as may, in his judgment, be appropriate, including the use of force, to protect American citizens and property abroad. Durand v. Hollins, Fed. Cas. No. 4186 (C.C.S.D.N.Y. (1860)); In Re Neagle, Supra,

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135 U.S. at 64; Hamilton v. M'Claghry, 136 Fed. 445, 449-50 (D. Kansas, 1905); II Hackworth, Digest of International Law, 327-334; VI Id., 464-5. Notwithstanding the exclusive power of Congress to declare war, the President may repel armed attack and "meet force with force." Prize Cases, 2 Black 635, 668 (1862). He may impose restrictions on the operation of domestic radio stations which he deems necessary to prevent unneutral acts which may endanger our relations with foreign countries. 30 O.A.G. 291.

Congress' grants of powers to executive agencies in areas relating to the conduct of foreign relations and preservation of the national security from external threats are generally couched in terms which neither limit the powers of the President nor restrict his discretion in the choice of the agency through which he will exercise these powers. Thus, in establishing a Department of State in 1799, Congress directed that the Secretary should perform duties relating to "such . . . matters respecting foreign affairs as the President of the United States shall assign to the Department", and should "conduct the business of the department in such manner as the President shall direct." 1 Stat. 28; R.S. § 202, 5 U.S.C. 156.

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More recently, in establishing the National Security Council, Congress gave it the function of advising the President "with respect to the integration of domestic, foreign, and military policies relating to the national security." 50 U.S.C. 402 (a).

From the beginning of our history as a nation, it has been recognized and accepted that the conduct of foreign affairs on occasion requires the use of covert activities, which might be of a quasi-military nature. See, e.g., the acts of July 1, 1790, 1 Stat. 128, and Mar 1, 1810, sec. 3, 2 Stat. 609. In a message to the House of Representatives declining to furnish an account of payments made for contingent expenses of foreign intercourse, President Polk reviewed that practice and stated:

"The experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good to make expenditures the very object of which would be defeated by publicity." 1/

1/ President Polk continued:

"Some governments have very large amounts at their disposal, and have made vastly greater expenditures than the small amounts which have from time to time been accounted for on President's certificates. In no nation is the application of such sums ever made

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public. In time of war or impending danger the situation of the country may make it necessary to employ individuals for the purpose of obtaining information or rendering other important services who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency would in any contingency be divulged. So it may often become necessary to incur an expenditure for an object highly useful to the country; for example, the conclusion of a treaty with a barbarian power whose customs require on such occasions the use of presents. But this object might be altogether defeated by the intrigues of other powers if our purposes were to be made known by the exhibition of the original papers and vouchers to the accounting officers of the Treasury. It would be easy to specify other cases other cases (sic) which may occur in the history of a great nation, in its intercourse with other nations, wherein it might become absolutely necessary to incur expenditures for objects which could never be accomplished if it were suspected in advance that the items of expenditure and the agencies employed would be made public." 4 Richardson, Messages and Papers of Presidents, 431, 435 (April 20, 1846)

Compare also Stuart, American Diplomatic and Consular Practice (1952) p. 196, (commenting on prevailing diplomatic practice of all countries), "actual cases of interference in the internal affairs of states to which the envoys are accredited are very numerous."

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by the Lewis and Clark expedition of 1803. That expedition was authorized prior to the Louisiana Purchase by a statute providing

"That the sum of two thousand five hundred dollars be, and the same is hereby appropriated for the purpose of extending the external commerce of the United States (2 Stat. 206)."

Congress used this cryptic language at the request of President Jefferson because, in the words of a present-day judge, the "expedition, military in character, would enter into lands owned by a foreign nation with which the United States was at peace and . . . the utmost secrecy had to be observed." ^{2/} First Trust Co. of St. Paul v. Minnesota Historical Soc., 146 F. Supp. 652, 656 (D.C. Minn. (1956)), aff'd sub. nom. United States v. First Trust Co. of St. Paul, 251 F. 2d 686 (C.A. 8).

^{2/}In his message to the Congress, President Jefferson stated: "*** The appropriation of \$2,500 ' for the purpose of extending the external commerce of the United States,' while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice and prevent the obstructions which interested individuals might otherwise previously prepare in its way." (1 Richardson, Message and Papers of the Presidents, 352 at 354.)

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Under modern conditions of "cold war", the President can properly regard the conduct of covert activities such as are described at the opening of this memorandum as necessary to the effective and successful conduct of foreign relations and the protection of the national security. When the United States is attacked from without or within, the President may "meet force with force", Prize Cases, supra, In waging a world wide contest to strengthen the free nations and contain the Communist nations, and thereby to preserve the existence of the United States, the President should be deemed to have comparable authority to meet covert activities with covert activities if he deems such action necessary and consistent with our national objectives. As Charles Evans Hughes said in another context, "Self-preservation is the first law of national life and the constitution itself provides the necessary powers in order to defend and preserve the United States." War Powers Under the Constitution, 42 A.B.A. Rep. 232 (1917). Just as "the power to wage war is the power to wage war successfully," id. 238, so the power of the President to conduct foreign relations should be deemed to be the power to conduct foreign relations successfully, by any means necessary to combat the measures taken by the Communist bloc, including both open and covert measures.

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The exclusive power of Congress to declare war has been held not to prevent use by the President of force short of war to protect American citizens and property abroad. A fortiori, it does not prevent his use of force short of war for other purposes which he deems necessary to our national survival. In either case the magnitude and possible grave international consequences of a particular action may be such as to render it desirable for the President to consult with, or obtain the approval or ratification of, the Congress if circumstances permit such action. But the necessity for obtaining such approval does not depend on whether the action is overt or covert.

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II. Statutory Authority

There is no specific statutory authorization to any agency to conduct covert cold war activities. Nor is there any statutory prohibition, except to the extent, if any, that the prohibitions of the Neutrality Acts, 18 U.S.C. Chapter 45, against performance of certain acts by persons within the United States might be deemed applicable to such activities in particular circumstances. Hence the President is not restricted by act of Congress in authorizing such acts, or in assigning responsibility for them to such agency as he may designate.

Congress has authorized the Central Intelligence Agency, "for the purpose of coordinating the intelligence activities of the several government departments and agencies in the interest of the national security, " to perform, inter alia,

"such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." 50 U.S.C. 403(d)

As previously noted, the National Security Council, which includes in its membership the President, the Vice President the Secretary of State and the Secretary of Defense, has over all responsibility for advice to the President respecting all matters "relating to the national security."

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We understand that in 1947, Secretary of Defense Forrestal asked the Director of Central Intelligence if CIA would be able to conduct covert cold-war activities, such as black propaganda, commando-type raids, sabotage, and support of guerrilla warfare. CIA advised at that time that it would conduct such activities if the National Security Council developed a policy that the United States would engage in such covert activities and assigned their conduct to CIA, and if the Congress appropriated funds to carry them out. In the latter part of 1947 the National Security Council developed a directive (NSC 10/2) setting forth a program of covert cold-war activities and assigned that program to the Office of Policy Coordination under the Director of Central Intelligence, with policy guidance from the Department of State. The Congress was asked for and did appropriate funds to support this program, although, of course, only a small number of congressmen in the Appropriations Committees knew the amount and purpose of the appropriation. The Office of Policy Coordination was subsequently combined with the clandestine intelligence activities in the Office of the Deputy (Plans) of CIA and the cold-war charter was assigned

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to CIA in coordination with the Department of State and Defense by NSC Directive 5412.

A significant part of the strictly intelligence and counter-intelligence functions of CIA are clandestine in nature. It could perhaps be argued that many if not all of the covert activities assigned to CIA by the directives referred to above are at least "related" to intelligence affecting the national security within the scope of 50 U.S.C. 403 (d) (5) in the sense that their performance may need to be intimately dovetailed with clandestine intelligence operations, may involve use of the same or similar contacts, operatives and methods, and may yield important intelligence results.^{3/} Alternatively, it would appear that the executive branch, under the direction of the President, has been exercising without express statutory authorization a function which is within the constitutional powers of the President, and that the CIA was the agent selected by the President to carry out these functions.

^{3/} The historic relationship between the two types of activity is indicated by the fact that the Office of Strategic Services, CIA's predecessor during World War II, engaged both in intelligence work, and in assistance to and coordination of local resistance activities. See Alsop and Braden, Sub Rosa, The O.S.S. and American Espionage (1946) p. 7.

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Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both houses, and to members of the subcommittees of the ^{4/} Armed Services and Appropriations Committees of both houses. It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasional other members of Congress briefed for specific purposes. In effect, therefore, CIA has for many years had general funds approval from the Congress to carry

4/ See letter dated May 2, 1957, from Mr. Allen W. Dulles, Director, CIA to Senator Hennings, Freedom of Information and Secrecy in Government, Hearing before the Subcommittee on Constitutional Rights of the Senate Committee of the Judiciary, 85th Cong., 2d Sess., p. 376 at 377:

"The Director of the Central Intelligence Agency appears regularly before established subcommittees of the Armed Services and Appropriation Committees of the Senate and of the House, and makes available to these subcommittees complete information on Agency activities, personnel and expenditures. No information has ever been denied to their subcommittees."

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on covert cold-war activities, which the Executive Branch has the authority and responsibility to direct.

It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action.

Brooks v. Dewar, 313 U.S. 354, 361; Fleming v. Mohawk Co., 331 U.S. 111, 116; see also Ivanhoe Irrig. Dist. v. McCracken, 357 U.S. 275, 293-294; Power Reactor Co. v. Electricians, 367 U.S. 396, 409. Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members,^{5/} outlined above, are sufficient to render this principle applicable.

Prepared by Office of Legislative Counsel,
Department of Justice

^{5/} Compare the cases of veiled, or contingent fund, appropriations referred to in Part I. And note the importance placed on the close contact between an agency and "its" committees. E.g., Panama Canal Co. v. Grace Line Inc., 356 U.S. 309, 319.

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REFERENCE SHEET

- A. Ltr to Congressman Paul J. Kilday fr Comptroller General, dtd 29 May 1959
- B. Ltr to Hon. Allen Dulles fr Congressman Paul J. Kilday, dtd 18 June 1959
- C. Ltr to The President fr Hon. Allen Dulles, dtd 30 June 1959
- D. Ltr to Congressman Paul J. Kilday fr Hon. Allen Dulles, dtd 25 July 1959
- E. Ltr to Congressman Paul J. Kilday fr Hon. Allen Dulles, dtd 3 August 1959
- F. Ltr to Comptroller General fr Hon. Allen Dulles, dtd 16 October 1959
- G. Ltr to Congressman Paul J. Kilday fr Comptroller General, dtd 16 May 1961 (Confidential)
- H. Ltr to Hon. Allen Dulles fr Comptroller General, dtd 16 May 1961 (Confidential)
- I. Ltr to Comptroller General fr Congressman Carl Vinson, dtd 18 May 1961 (Confidential)
- J. Ltr to Congressman Carl Vinson fr Comptroller General, dtd 21 June 1962 (Confidential)
- K. Draft Ltr to Comptroller General fr Congressman Carl Vinson, dtd 11 July 1962
- L. Ltr to Congressman Carl Vinson fr Comptroller General, dtd 26 July 1962

B-133200

(May 29, 1959)

Honorable Paul J. Kilday, Chairman
Special Subcommittee, Central Intelligence Agency
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

On May 15, 1959, Mr. A. T. Samuelson, Director of our Civil Accounting and Auditing Division, attended an executive meeting of your Subcommittee to discuss our audit responsibilities and activities at Central Intelligence Agency. At the conclusion of this meeting, it was suggested that recommendations be submitted for the future audit activities by the General Accounting Office at this Agency.

Following the enactment of the Central Intelligence Agency Act of 1949, the then Director of the Agency requested that notwithstanding the very broad and unusual powers granted to the Central Intelligence Agency by the Act an audit of expenditures at the site, as previously performed by the General Accounting Office, be continued. Accordingly, the General Accounting Office has continued to make audits of vouchered expenditures, under the same arrangements that were in effect with the predecessor Central Intelligence Group. However, in view of the provisions of section 10 of the Central Intelligence Agency Act, no exceptions have been taken to any expenditures. In those cases where questionable payments come to our attention, we refer the cases to the CIA Comptroller's Office for corrective action. In using the term questionable payments, we mean any expenditures which, except for section 10 (a) of the Act, would appear to be improper or illegal either under law or under the decisions of the Comptroller General. In our audit work, we have not made a substantive review of Agency policies, nor of its practices and procedures, and we have made no audit of expenditures of unvouchered funds.

Since the enactment of Central Intelligence legislation, we have generally broadened the type of audit we make of the activities of most Government agencies. Under our comprehensive audit approach, our basic purpose is to review and evaluate the manner in which the agency or activity under audit carries out its financial responsibilities. We construe financial responsibilities as including the expenditure of funds and the utilization of property and personnel in the furtherance only of authorized programs or activities in an effective, efficient, and economical manner. In carrying out this kind of an audit, we examine the organization structure and review the established agency policies for conformity with legislative intent and applicability to agency activities. We also examine agency practices and procedures followed in carrying out the agency policies and make selective examination of actual transactions as a means of appraising the application of agency practices and procedures. Reports on the results of our work are submitted to the Congress and to agency management officials.

We believe that a broader type of audit is appropriate for our work at Central Intelligence Agency and is more likely to be productive of evaluations of the administrative functions which would be helpful to the Congress and the Agency Director. We have accordingly concluded that it would be desirable to expand our audit work at Central Intelligence Agency more in line with our regular comprehensive audit approach. The expanded work would include an examination of vouchered expenditures, and, at the outset, the controls and procedures used in processing unvouchered expenditures. Also we would propose to make a limited examination of the support for unvouchered expenditures in accordance with such agreement as to access as can be worked out between CIA and our Office. As indicated by the preceding comments we have heretofore carried out only limited audit work at CIA, and we do not believe such limited work should be continued.

At this time we do not recommend any change in section 10 of the Central Intelligence Agency Act. We believe, however, that your Subcommittee could be very helpful in effecting a change in the scope of our audit work at CIA by advising the Agency of your interest in broadening the audit performed by the General Accounting Office. Any broadening of our audit activities should not include an evaluation of the intelligence activities of the Agency.

We are prepared to discuss this matter further at your convenience.

Sincerely yours,

/s/

Comptroller General
of the United States

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HOUSE OF REPRESENTATIVES

Committee on Armed Services

Suite 313, House Office Building

Washington 25, D. C.

June 18, 1959

Honorable Allen Dulles
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Dulles:

On March 2, 1959 and subsequent dates staff meetings were held between the CIA Subcommittee and the General Accounting Office in order to develop a clearer understanding of the relationship between the General Accounting Office and the Central Intelligence Agency. Upon completion of these staff meetings the CIA Subcommittee met on May 15 with a senior representative of the General Accounting Office for the purpose of pursuing the information developed in the staff conferences.

The Subcommittee fully appreciates the legal exemption of the Central Intelligence Agency from audit by the General Accounting Office. However, since representatives of GAO have been assigned to the Central Intelligence Agency since you became Director and prior thereto, there is a general impression that the vouchered funds of CIA have been subjected to the normal audit function of the General Accounting Office. It is this particular point that the Subcommittee pursued at its meeting on May 18.

At the conclusion of its meeting, the Subcommittee informally concluded that:

(1) the degree of audit of vouchered funds performed by GAO representatives in the Central Intelligence Agency was considerably less than had been thought;

(2) for the protection of the Agency and the assurance of the Congress, the audit function should continue;

(3) that more senior representatives of the General Accounting Office should be assigned to this function; and,

(4) that the Chairman of the Subcommittee should seek the formal opinion of the Comptroller General with respect to this matter.

In keeping with the above, I requested the official opinion of the Comptroller General on the relationship of his office with the Central Intelligence Agency. Under date of May 29, I received a letter from the Comptroller General, a self-explanatory copy being hereto attached. You will note that the Comptroller General recommend a broader type of audit than is presently accomplished. At the same time he takes cognizance of appropriate restrictions which are inherent in this endeavor.

The question now arises as to the action that will be taken with reference to this matter. Inasmuch as the General Accounting Office participates in the activities of your Agency by invitation, it is my opinion that it would be both appropriate and desirable for you to initiate a conference with the Comptroller General in an effort to clarify the existing situation. The CIA Subcommittee stands ready to assist in any manner, but I believe you will concur in my thought that the conference which I have suggested represents the most desirable approach to a solution.

As soon as you have had an opportunity to consider this matter I would appreciate an expression of your reaction.

Sincerely,

/s/

Paul J. Kilday, Chairman
Subcommittee on CIA

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30 JUN 1959

The President
The White House
Washington 25, D. C.

Dear Mr. President:

I have received a letter dated June 18, 1959, from Representative Paul J. Kilday, Chairman of the CIA Subcommittee of the House Armed Services Committee, concerning the audit of the so-called vouchered funds of this Agency as distinguished from the funds expended for highly classified confidential purposes. With this letter Mr. Kilday sent me a communication to him from the Comptroller General on the same subject.

The Comptroller General notes that since the enactment of Central Intelligence Agency legislation the General Accounting Office has generally broadened the type of audit made of activities of most Government agencies but that with the Central Intelligence Agency it has continued to make only a voucher audit of vouchered funds and no audit of confidential funds. He, therefore, recommends "... a change in the scope of our audit work at CIA ..." by broadening the General Accounting Office's audit while recognizing that "Any broadening of our audit activities should not include an evaluation of the intelligence activities of the Agency." Mr. Kilday, speaking for his Subcommittee in his letter of June 18th, recommends that the Agency consider with the Comptroller General "a broader type of audit than is presently accomplished."

The history and facts in this matter are as follows: Section 10(b) of the Central Intelligence Agency Act of 1949 provides

"The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

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In view of the close interrelation of all of this Agency's activities, I believe it could have been correctly argued that all of the funds of the Agency should be expended under the authority of this section so that none of them would be subject to outside audit. However, it has been our practice, as you know, to put as much of our expenditures on the "vouchered" side as is possible and still protect sensitive activities. Such expenditures have been subject to a voucher audit by representatives of the General Accounting Office. All other expenditures have been subject to the strictest kind of internal control and auditing by our own Audit Staff and Comptroller. The proportion as between vouchered and confidential has varied from year to year but on the average has been about 45 per cent vouchered to 55 per cent confidential.

I would be pleased to continue with these procedures; however, if there is a broadening of the General Accounting Office's review into a comprehensive audit of the vouchered side, we will encounter serious problems as such an examination would necessarily extend into the field of intelligence sources and methods unless its scope were limited at our direction.

The Central Intelligence Agency is a particularly sensitive arm of the executive branch of the Government in the general field of foreign relations, and I would not wish its usefulness to be impaired in any way by accepting from a body responsible to the legislative branch or from the legislative branch a measure of control or supervision detrimental to its effectiveness. Accordingly, I felt I should submit these facts to you. At the same time, I would suggest that I discuss the matter with the Comptroller General, Mr. Campbell, as well as Mr. Kilday, if you approve, to determine whether a form of audit of so-called vouchered funds satisfactory to the General Accounting Office and to Mr. Kilday and his Subcommittee can be agreed upon without impairing the powers and authorities with regard to expenditures for confidential purposes which we have found essential to our operations.

If you agree, I shall proceed to have such conversations and I shall report the results to you without reaching any commitment until I have obtained your concurrence.

Sincerely,

SIGNED

Allen W. Dulles
Director

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25 July 1959

The Honorable Paul J. Kilday
Chairman, Subcommittee on CIA
Committee on Armed Services
U. S. House of Representatives
Washington 25, D. C.

Dear Mr. Kilday:

I refer to your letter of 18 June 1959 and to our discussion on 30 June 1959 with regard to your desire that I initiate a conference with the Comptroller General to consider the possibility of a broader type of audit in the Central Intelligence Agency by the General Accounting Office.

This is an interim report to advise you that I have contacted Mr. Campbell who designated Mr. A. T. Samuelson to discuss this matter with us initially. Colonel L. K. White, my Deputy Director for Support, has had a meeting with Mr. Samuelson, and Mr. Campbell and Mr. Samuelson have accepted my invitation to a briefing next week in order to gain a better understanding of our activities and of the problems inherent in the conduct of a comprehensive audit. After this briefing and any other subsequent discussions which the Comptroller General and I may feel necessary, I shall report further to you on this matter.

Sincerely,

Allen W. Dulles
Director

3 August 1959

The Honorable Paul J. Kilday
Chairman, Subcommittee on CIA
Committee on Armed Services
U. S. House of Representatives
Washington 25, D. C.

Dear Mr. Kilday:

With further reference to my letter of 25 July 1959 in connection with the relationship between the Central Intelligence Agency and the General Accounting Office I should like to report that Mr. Campbell, the Comptroller General, accompanied by Mr. Keller, his General Counsel, and Mr. Samuelson, Director of the Civil Accounting and Auditing Division, GAO, attended a briefing of approximately three hours duration in my offices on 30 July 1959. This briefing included presentations by our most senior officials who are responsible to me for the conduct of our operations and financial activities.

Insofar as was possible within the time available, we gave Mr. Campbell a full explanation of the activities of the entire Agency. He indicated that the briefing was extremely helpful and that he would be in touch with us again soon.

I shall keep you advised as to our progress.

Sincerely,

Allen W. Dulles
Director

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

B-133200

May 16, 1961

Honorable Paul J. Kilday, Chairman
Special Subcommittee, Central Intelligence Agency
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

The General Accounting Office has made a review of selected activities of the Central Intelligence Agency (CIA) for the purpose of determining whether the scope of the audit of the General Accounting Office could be expanded sufficiently to make reasonably comprehensive evaluations of CIA activities that would be helpful to the Congress.

This review was made pursuant to the interest indicated by the Special Subcommittee at an executive hearing in May 1959. Following several meetings between representatives of the General Accounting Office and CIA, the Director of Central Intelligence and the Comptroller General in October 1959 had an exchange of correspondence concerning the audit and concerning restrictions on undertaking reviews in the area of sensitive security operations. Various steps were taken by CIA to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA. It is our view, however, that under existing security restrictions on our audit of CIA activities, we do not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress.

We limited our review to selected overt activities as access to the covert (confidential) activities of CIA was denied us. We have had no access whatsoever to the Plans Component, and we cannot effectively review and evaluate the activities of the Support Component because the confidential and overt activities of this component are integrated to such an extent that we cannot make reasonably comprehensive audits. We have been given sufficient access to make reasonably comprehensive reviews of the overt activities of the Intelligence Component, but such reviews, in our opinion, will not be productive of significant evaluations because we cannot feasibly evaluate the extent to which needed overt information is available for

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collection or determine the need for the intelligence information selected for collation and use in the production of intelligence reports. About 90 percent of the annual expenditures of the Intelligence Component relates to payroll and other contractual payments for personal services rendered in selecting on the basis of personal judgment under broad guidelines established by the intelligence community the specific information to be collected, collated, and used in the production of intelligence reports.

Based on our review, we believe that (1) CIA is financing certain Library of Congress activities which substantially transcend CIA's interest and responsibility for providing a centralized reference service as a service of common concern to the intelligence community and (2) administrative controls over CIA's covert field organization, the U. S. Joint Publications Research Service, should be strengthened. In addition, we have questioned the arrangements under which CIA is financing certain activities at the Department of State.

Two projects at the Library of Congress, the Monthly Index of Russian Accessions and the East European Accession Index, are being financed through the operating budgets of the Office of Central Reference. The budget of this office includes \$685,000 to finance these projects in fiscal year 1961. The projects produce publications which are primarily distributed to public and private research organizations and libraries in the United States and many foreign nations, including some in the U. S. S. R. and its satellites. These projects, in our opinion, substantially transcend CIA's interest and responsibility for providing a central reference facility as a service of common concern to the intelligence community.

We have been advised by CIA that based on a review of the needs of the intelligence community, it has been determined that the present published form of these indexes is not essential for intelligence purposes, but, there are portions of the research work that goes into the preparation of the indexes that CIA would want to continue, and the matter is under active consideration to determine what portion of the related costs should continue to be financed by CIA.

Certain administrative procedures pertinent to CIA's control over the activities of its covert field organization, the U. S. Joint Publications Research Service, should be strengthened. We have been advised by CIA that changes are to be made which will strengthen these controls.

Two projects at the Department of State, the National Intelligence Survey and Biographic Intelligence, are being financed by CIA through the operating budgets of the Office of Central Reference and the Office of Basic Intelligence. The budgets

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of the two offices include \$2,417,000 to finance these projects in 1961. In April 1961, we were advised by CIA that the Department of State and CIA have been considering the possible transfer of these Department of State activities to CIA. CIA presently has under consideration other matters raised by us on these financing arrangements, and we will furnish you with a supplementary letter when decision has been reached thereon.

In as much as we cannot, in our opinion, effectively accomplish any worthwhile audit objectives on a continuing basis, we plan to discontinue our audit of CIA activities.

We are prepared to discuss these matters with you should you so desire.

A copy of this letter is being sent today to the Director of Central Intelligence.

Sincerely yours,

/s/
Comptroller General
of the United States

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COMPTROLLER GENERAL OF THE UNITED STATES

ER 61-4049

DD/S-61-1640

WASHINGTON 25

133200

May 16, 1961

Honorable Allen Dulles, Director
Central Intelligence Agency

Dear Mr. Dulles:

The General Accounting Office has completed a review of selected overt activities of the Central Intelligence Agency. Based on this review, we believe that under existing security restrictions on the General Accounting Office audit of CIA activities, we do not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress.

Our review of selected overt activities in the Intelligence Component disclosed certain matters that were brought to the attention of CIA officials, and we were advised by them that corrective action on these matters is to be taken, or is presently under consideration by CIA.

I wish to acknowledge the cooperation of CIA officials in taking various steps to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA.

Transmitted herewith is a copy of a letter sent today to the Chairman, Special Subcommittee, Central Intelligence Agency, Committee on Armed Services, House of Representatives, presenting the results of our review.

Sincerely yours,

/s/

Comptroller General of
the United States

Attachment

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

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3-133200

Honorable Carl Vinson, Chairman
Committee on Armed Services
House of Representatives

JUN 21 1962

Dear Mr. Chairman:

By letter dated May 16, 1961, to Honorable Paul J. Tilday, Chairman, Special Subcommittee, Central Intelligence Agency, Committee on Armed Services, House of Representatives, we reported upon our review of selected activities of Central Intelligence Agency (CIA) for the purpose of determining whether the scope of the audit of the General Accounting Office could be expanded sufficiently to make reasonably comprehensive evaluations of CIA activities. In this letter we stated that under the existing security restrictions on our audit of CIA activities we did not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress and that we planned to discontinue the work.

Your letter to us dated May 15, 1961, recommended that the audit not be discontinued at that time and accordingly we have continued our work at CIA despite the severe limitations placed upon us. Our further reviews, confined wholly to certain units in the Intelligence Component, have not resulted in any change in our views that under existing security restrictions on our audit of CIA activities we do not have sufficient access to effectively accomplish any worthwhile audit objectives at CIA on a continuing basis. We are submitting this letter so that you may consider further our views on this matter at this time.

The limitations placed upon our audit activities at CIA are severe. Following several meetings with the Director, Central Intelligence Agency, and members of his staff, we exchanged correspondence in October 1959 which in essence recognized that an audit of CIA would have to be limited to reviews outside the areas of sensitive security operations on:

- (1) Expenditures certified by the Director under Section 8 of Central Intelligence Act of 1949, as amended.
- (2) Certain activities in support of confidential operations prohibited by the authority to the Director under Section 8.

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We agreed that to the extent expenditures were certified by the Director as being of a confidential, extraordinary, or emergency nature, such expenditures were not subject to examination by the General Accounting Office without the concurrence of the Director. The activities in support of the confidential operations embraced practically all of the administrative operations. Nonetheless, we were willing to attempt to make an audit at CIA within the principles stated by the Director in his letter of October 15, 1959, but in our reply dated October 21, 1959, we stated that in the event it appeared after a trial period our reviews were limited to such an extent that we could not effectively and constructively accomplish any worthwhile objectives we would consider whether or not the audit should be continued.

During the ensuing 30 months we undertook to make reviews of selected overt activities as access to the covert activities was not made available to us. In this connection, access to the activities of the Support Component in which we could be expected to be most effective in our reviews was significantly limited because covert and overt activities of this component are integrated. We were not able to review sufficiently financial management, property management, contracting, procurement, and similar activities for any effective appraisal of the administration of these activities. Our access for a review of the internal audit program and reports was very limited and we had no access whatever to the work of the Inspector General; therefore, we were not able to appraise the internal review mechanisms within the Agency. We have had rather complete access to the activities of the Intelligence Component, but the nature of these activities and the lack of complete access to internal review programs and reports has significantly limited our effectiveness in this area.

In undertaking to make reviews at the Central Intelligence Agency, we recognized that the nature of the activities of this Agency presented problems on sufficient breadth of coverage and review of detail for the purpose of reaching sound conclusions. We have made every effort to broaden our review of the activities of the Agency within the limitations which were placed on us, and we wish to assure you that our conclusion that we could not effectively accomplish any worthwhile audit objectives at CIA on a continuing basis was reached only after considering all the factors as we saw them.

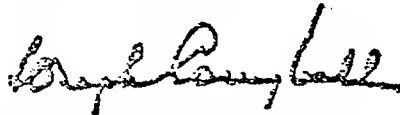
To obtain the maximum effectiveness of a General Accounting Office audit of CIA activities, it would be necessary for our audit staff to have nearly complete access to CIA activities. However, we believe it to be possible to perform reasonably comprehensive reviews of CIA activities if we were permitted complete access to the administrative activities, such as financial, procurement, property, and personnel

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management and internal review activities that are performed in support of both sensitive and non-sensitive operations of CIA.

We appreciate your interest in our work at CIA and the expression of your views on the discontinuance of our work there is invited. We are prepared to discuss these matters further with you.

Sincerely yours,



Comptroller General
of the United States

CONFIDENTIAL

- 3 -

COPY OF DRAFT; COPY OF FINAL LETTER NOT
RECEIVED

DRAFT
OGC:LRH:jeb
11 July 1962

Honorable Joseph Campbell
The Comptroller General
of the United States
Washington 25, D. C.

Dear Mr. Campbell:

I have read your letter concerning the restrictions on performance of an audit of the Central Intelligence Agency and your opinion that as a result of these restrictions you could not effectively accomplish any worthwhile audit objectives at the Central Intelligence Agency.

As you know, the restrictions you met with in the Central Intelligence Agency are necessary, I believe, for the proper protection of its intelligence activities and should be maintained. Also, Mr. McCone has informed us that among the reorganizational steps he has carried out is a major strengthening of the comptroller and internal audit functions in the Agency. Consequently, I believe you have met the objectives of my letter of May 13, 1961, which recommended that you continue your work at that time, and since you feel confirmed in your opinion that it is not a worthwhile effort, I am agreeable that you withdraw from further audit activities in the Central Intelligence Agency.

Sincerely,

Carl Vinson



COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON

JUL 26 1962

Dear Mr. Chairman:

Your letter dated July 18, 1962, on further audit activities by the General Accounting Office at Central Intelligence Agency is acknowledged.

Your acceptance of our conclusion that we withdraw from further audit activities at this Agency is appreciated and we will proceed to complete the work that is in process at a relatively early date.

Sincerely,

Joseph Campbell

Comptroller General
of the United States

Honorable Carl Vinson
Chairman, Committee on
Armed Services
House of Representatives

OGC 74-0477

19 March 1974

NOTE FOR THE FILE

SUBJECT: Jury Duty in Prince George's County

1. In a recent meeting with Judge Roscoe Parker, Jury Judge of the Circuit Court of Prince George's County, Maryland, I was advised that he has no objection to a covert employee of the Agency serving on a jury in Prince George's County.

2. I explained the problems we had in other local jurisdictions in this regard, but Judge Parker, who is quite knowledgeable of the Agency's statutory responsibilities, said he could not recall any problems with jury service by CIA covert employees in his fifteen years on the bench.

3. To assist us, however, the following procedure was agreed upon. When a covert employee is summoned for jury service in Prince George's County, he is to contact Judge Parker on the morning of the first day of jury duty and identify himself as an Agency employee at which time Judge Parker will brief him on how to respond to certain questions which might be asked during voir dire examination.

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Assistant General Counsel

JGB:ks

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✓ - JGB Signer

1 - Chrono

Next 4 Page(s) In Document Exempt

OGC 74-0545

25 March 1974

MEMORANDUM FOR THE RECORD

SUBJECT : Claim by [] 25X1A

REFERENCE : Memo to JSW fr JED dtd 4 Feb 74, re: Creditable
Service for Retirement Purposes-- [] 25X1A

1. In accordance with the referent memorandum, on 15 February 1974 I discussed the subject claim with Mr. Thomas A. Tinsley (101-24581), the Director, Bureau of Retirement, Insurance and Occupational Health, CSC. (Mr. Tinsley was appointed Director upon the retirement of Mr. Andrew Ruddock and has been appropriately cleared.) I explained to Mr. Tinsley that Mr. Ruddock had discussed the matter with [] in 1970 and had instructed Mr. [] detail his case in writing and return it personally to Mr. Ruddock or process it through the Agency. (In following these instructions, Mr. [] not only detailed his retirement claim but also added two additional claims.)

2. I reviewed the Agency's position regarding proprietary employees with Mr. Tinsley, discussing in detail those same aspects that were discussed with members of CSC's Board of Appeals in the [] [] dated 29 January 1969). I also stated that our review of Mr. [] creditable service claim revealed that Mr. [] added nothing new to the matter he presented to us in 1970. As we did not find such service creditable then, there seems to be no basis to change that decision now. Mr. Tinsley briefly reviewed the claim and then stated that he saw no basis in the letter to find the service creditable. Accordingly, I suggested that, as Mr. [] is currently within the Civil Service Retirement System, it would be appropriate for CSC to inform [] directly of their determination. I sent a copy of the claim (OGC 74-0313, dated 15 February 1974) to Mr. Tinsley who will correspond with Mr. [] directly.

3. On 22 February 1974 [] called this Office inquiring as to the status of his claim. I explained that, although he had lodged a single claim, in reality, it was three separate claims and each part must be processed

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independent of the others. I mentioned that CSC was currently considering the first part of his claim, that they would correspond with him directly and that we had not made as much progress on the other two parts. I assured Mr. [] that as soon as I had something concrete to report on these two parts that I would be in touch with him.

25X1A 4. On 25 February 1974 I met with Mr. Clyde Carter, Air America, to review []' claim with him. Mr. Carter informed me that Mr. [] had visited the Air America offices prior to the submission of his claim. 25X1A Mr. [] left the impression with Mr. Carter that he intended to methodically 25X1A pursue his claim, exploring all administrative remedies in order to obtain satisfaction; however, if these remedies fail he will likely pursue the matter in court. Further, [] told Mr. Carter that he has yet to retain counsel. 25X1A I explained the results of my meeting at CSC to Mr. Carter and discussed the precedent for a disability claim such as that Mr. []'s lodging. It was Mr. Carter's recollection that no employee of Air America has been covered by the Federal Employees' Compensation Act, but some have been covered by the Defense Base Act. I explained to Mr. Carter that it was my view that the third 25X1A part of Mr. [] claim--the payment for loss of his pilot's license--would be a matter properly resolved between Mr. [] and Air America. Accordingly, I will suggest to Mr. [] that he make that claim directly with Air America.

5. On 25 February 1974 I met with Messrs. Herbert A. Doyle and his deputy, Albert Klien of the Employment Standards Administration (ESA), Department of Labor. Both of these individuals hold appropriate Agency clearances. Within ESA Mr. Doyle holds two positions, Director, Office of Federal Employees' Compensation and Acting Director, Office of Workmen's Compensation Programs. As a result, Mr. Doyle has the responsibility for the administration of the provisions of both the Federal Employees' Compensation Act (FECA) and the Defense Base Act (DBA). I explained Mr. [] claim, stating that the disability part seemed appropriately within the jurisdiction of ESA. It was Mr. Doyle's recollection that Air America employees had been processed under the FECA in the past, but his files on this subject were not immediately available. Mr. Doyle explained that in processing an FECA claim, his office made the following determinations:

a. Whether the claim was timely made--there is an absolute five-year statutory limitation (5 U.S.C. 8122) from the date the claimant knew or would be reasonably expected to know that his disability was a result of the employment.

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b. Whether the individual qualifies as an employee under the Act as defined by 5 U.S.C. 8101.

c. Whether the disability occurred during the performance of the employee's duty.

d. Whether there is a causal relationship between the disability and the employment.

The first determination must be affirmative before ESA will even consider the next. If, for example, the claim was not timely made, ESA will not consider the question of Federal employment. We discussed at some length the timeliness aspect of the claim. It appears that there is not enough information in the claim to make a determination in that 5 U.S.C. 8122(b) states:

In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

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The type of disability--polio--that [] suffered has been classified as a latent disability by ESA. In order to obtain additional data regarding the date of the employee's knowledge of causal relationship, ESA has the employee and the employing agency complete their forms CA-1 and 2 and CA-4.

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6. On 28 February 1974, Mr. Doyle called to explain that it was his opinion that [] claim would not be covered under the FECA. He wanted to research whether the DBA had application.

7. On 18 March 1974 I again discussed the applicability of the DBA with Mr. Doyle. He explained that Section 913a of Title 33, which is incorporated into the DBA, was amended in 1972 (P.L. 92-576) to state in part that:

The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should be aware, of the relationship between the injury or death and the employment.

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[] claim does not specifically state when he had knowledge of the relationship between his disability and his employment. We also discussed Section 930(f) of Title 33 which states in part that where the employer has been given notice or has knowledge of an injury or death and fails to file a report in accordance with Section 930(a), Section 913 does not begin to run until such report is filed. It is my understanding that no report has been filed by [] employer; however, Mr. Doyle explained that there is no evidence here that the employer was given notice or had knowledge of the relationship between Mr. [] disability and his employment. Therefore, in Mr. Doyle's opinion Section 930(f) would not toll the running of the Section 913 statutory period.

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8. Mr. Doyle and I agreed that while there are a number of methods to process this claim, the most direct would be that in which I would submit Mr. [] claim to Mr. Doyle for his consideration of all applicable law that he has the responsibility for administering. Thus, I sent a copy of Mr. [] claim (OGC 74-0480, dated 19 March 1974) to Mr. Doyle, who, in accordance with our discussions as outlined above, will have to inquire of Mr. [] as to when Mr. [] first became aware of the relationship between his disability and his employment in order to determine whether Mr. [] can qualify under the DBA.

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9. Accordingly, I notified [] on 25 March 1974 that his disability claim is being processed by the Department of Labor and that he should expect them to contact him directly. As to the third part of his claim--the loss of license--I informed Mr. [] that he should lodge such a claim directly with his former employer. I will confirm this in a letter to Mr. [] I outlined this same information to Mr. Carter. Further, I passed this information to the Deputy Director of Security.

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[]

Assistant General Counsel

cc: DD/Personnel
* DD/Security
DDM&S

SECRET

OGC 74-0472

26 March 1974

MEMORANDUM FOR: Mr. Warner

SUBJECT: Restrictions on Use of Telephone Recording
Devices

1. A Federal Communications Commission (FCC) regulation (47 C. F. R. 64.501) prohibits a telephone company from using any recording device to monitor telephone conversations unless the parties to the conversation are given proper notice that the conversation is being recorded. Such notice is required to be given by the use of an automatic tone warning device--the so-called "beep tone"--which is repeated at regular intervals during the course of the conversation. It is also mandatory that no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

2. To comply with the above regulation, telephone companies have inserted a similar limitation in their tariff schedules, which are filed with the Federal Communications Commission in accordance with 47 U. S. C. A. 203.

3. It seems clear that the burden of meeting the "beep tone" requirement is on the telephone companies rather than on the users, which creates a rather difficult enforcement problem for this reason. If the "beep tone" requirement is violated, a telephone company can be fined up to \$500 for each day of the violation. 47 U. S. C. A. 502. However, the telephone company's only recourse against the subscriber who violates the "beep tone" requirement is to remove the telephone. In practice, the likelihood that a telephone company will take such action against subscribers is very slight. As it was pointed out in OGC 74-0428 dated 8 March 1974, telephone companies are too concerned with First Amendment and monopoly problems since the subscriber has

no alternative to their service. Thus, a subscriber who records a conversation without the "beep tone" runs very little risk. It remains, nonetheless, a violation of the tariff schedules filed by telephone companies with the FCC to record a telephone conversation without the use of the "beep tone."

4. Another means of recording telephone conversations is the so-called induction method where a tape recorder is attached to an induction coil placed against a previously installed telephone. This method also violates the FCC regulation unless a "beep tone" is used.

5. In any event, it has been held that no interception occurs when one party to a telephone conversation simply records it for his own use. Parkhurst v. Kling, 249 F. Supp. 315 (D.C. Pa., 1965). Thus, there is no violation of 47 U.S.C.A. 605 which prohibits the interception and publication of telephone and radio communications without the consent of the parties to the conversation. Likewise, there is no violation of the prescription against the wiretapping contained in the Omnibus Crime Act of 1968 (18 U.S.C.A. 2511, et seq.), since no "interception" takes place when one party to a conversation records it for his own use. Smith v. Cincinnati Post and Times Star, 353 F. Supp. 1126 (S.D. Ohio, 1972), aff'd, 475 F.2d 740 (1973).

6. With regard to the use of a microphone or an amplifier to monitor conversations, it also has been held that no interception occurs when a person places a microphone or a radio transmitter in such a position as to record a telephone conversation, since such listening in in no manner interferes with the transmission of the conversation over the telephone wires. Irvine v. California, 347 U.S. 128 (1954), Silverman v. United States, 365 U.S. 505 (1961), United States v. Borgese, 235 F. Supp. 286 (1964). Moreover, it is certain that a telephone company cannot be held responsible for recordings by these devices since the telephone system is not used. When one looks to the essential purpose of the FCC regulation, however, which is to protect the privacy of telephone communications, attempts to make distinctions between mechanical devices attached to telephones and mechanical devices not attached to telephones is meaningless, if the end result is the same.

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8. I discussed the above procedure with Mr. Hilbert Schlossberg of the General Counsel's Office at FCC, who advised me that police departments, fire departments, and the like, also record conversations involving threats, safety and related topics. These organizations usually have an agreement with the local telephone company permitting recordation of the conversations without the "beep tone" or any other notice. If the Agency wants to be absolutely safe in this area, we can attempt to reach a similar agreement with C&P. Whether we decide to do so, however, is a matter of policy.

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Assistant General Counsel

Att

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Distribution:

- Original - COMMUNICATIONS (OGC 74-0428 filed in Equipment & Supplies)
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- 1 - D/Security

10 April 1974

MEMORANDUM FOR: Chief, Administrative Staff/OJCS

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SUBJECT : Outside Activity of Mr. [REDACTED]

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1. [REDACTED] a GS-12 computer programmer in OJCS, has requested approval to engage in certain outside activities. Specifically, he wishes to teach courses in computer science at the Bureau of Labor Statistics on 20 April and 10 May 1974. The work for the Bureau will be done under a contract between the Bureau and a firm called [REDACTED]. Mr. [REDACTED] is the president of this company. The agreement between the Bureau and [REDACTED] provides for the presentation of the courses in return for a fixed dollar amount. The courses will be taught by Mr. [REDACTED] outside of his normal duty hours with the Agency.

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2. The undersigned is of the opinion that Mr. [REDACTED] activities, described above, are not in violation of the Dual Compensation Act of 1964. The prohibition against receiving dual compensation is set forth at 5 U.S.C.A. 5533(a) as follows:

...an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

A "position" is defined as being a civilian office or position (including a temporary, part-time, or intermittent position) in the executive branch of the United States Government. 5 U.S.C.A. 5531(2). Congress has, however, excepted certain types of pay from the broad limitations set forth in sections 5533(a) and 5531(2). One of these exceptions is "pay consisting of fees paid on other than a time basis." 5 U.S.C.A. 5533(d)(2).

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3. So long as Mr. [] is compensated on a basis other than time, such as on a "per job" or "per course" basis, he will not violate the Dual Compensation Act.

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4. The undersigned is also of the opinion that based upon the above facts, Mr. [] is not in violation of the law applicable to conflicts of interest found in Title 18 of the United States Code and in Executive Order 11222. Therefore, there is no legal objection to his forming a company which offers computer programming and instruction to the general public and to his serving as president of the company. He should not, of course, either use any special knowledge gained through his Agency employment for his own benefit or use his position and duties with the Agency to solicit business. He should not in his outside employment engage in any work which might result in a conflict, or an apparent conflict, between his private interests and his official government duties and responsibilities. If Mr. [] has any specific questions concerning a particular contract, etc., his questions should be referred to this Office.

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5. The conclusions reached in this case should not be used as precedent in any other because cases concerning dual compensation and conflicts of interest are decided on the facts peculiar to each.

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[]
Office of General Counsel

OGC:AEG:cap

Original - Addressee

1 - EMPLOYEE RELATIONS AND ACTIVITIES

1 - AEG Signer

1 - Chrono

OGC 74-0676

11 April 1974

MEMORANDUM FOR: Director, Central Reference Service

SUBJECT: Agency Use of Copyrighted Pictorial
Material

REFERENCE: Your memorandum, same subj, dtd
7 Nov 73

1. Referenced memorandum requests both a legal opinion and practical guidance from this Office on the Agency's use of copyrighted pictorial materials. In addition, Mr. [REDACTED]


[REDACTED] has orally requested certain additional and specific guidance on the use of still photographs. This memorandum is in response to both requests.

2. Per your request at paragraph 4 of referent memorandum, I have met with and been briefed by representatives of your office concerning their procedures and activities which might be violations of copyright. First, in the area of still photographs, I was advised that you procure these either by extracting them from unclassified publications or by purchasing the rights to them [REDACTED]

[REDACTED] Those photographs which are extracted from unclassified publications are usually filed with an appropriate control marking-- "Official Use Only," "Government Use Only," or "Note Copyright Restrictions on Use." The use to which you put such photographs is usually in publications designed for consumption within the Agency or the intelligence community. For the most part these are classified publications or carry at the very least, one of the control markings. On occasion, though, you have been asked to permit the use of such photographs in unclassified publications (an example being provided with referent memorandum). In the

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25X1A [redacted] example--an unclassified, unmarked biographic report on [redacted]--there is a photograph of him taken from [redacted] 10 November 1969. While the report cites the source of the photograph, you advise no rights were 25X1C obtained for its use.



4. In the area of procurement, retention and use of television video materials, I was advised as follows: Normally, your people tape three news programs and the Today Show each day. In addition, they may from time to time at the request of an interested office, video tape programs of special interest on certain domestic issues such as riots, Watergate, etc. This activity is almost always done on request, an example being a recent CBS program entitled "Mysterious Alert." With respect to retention of these video tape materials, I was advised that they are not transferred to television film and are retained by CRS only so long as there is an operational need. The guidelines set out in your memorandum to the ADD/I of 14 December 1973 (Attachment A) would, on balance, seem to be very good and for purposes of this opinion, the guidelines are incorporated by reference herein.

5. A third area of concern to your officers is the increasing number of requests you receive to reproduce video

tape cassettes and reel-to-reel video tape programs which have been purchased from commercial distributors. The cassettes seem to be primarily training materials or courses provided via the television medium and the requests generally come from OTR. If you were to honor the request, the net effect would be that the Agency would purchase only one copy and then make as many duplicates as are needed. In this regard, the memoranda

STATSPEO by

to

[redacted] (Attachment B) and to Chief, Development and Technical Services Group, OTR, dated 30 November 1973 (Attachment C), seem particularly appropriate. Therein, in pertinent part he states:

I cannot authorize reproduction of the commercially produced video training course described in reference for reasons of copyright. Your memo does not indicate Hewlett Packard approval to reproduce the tapes in-house, so I must assume that we would be doing it against their reproduction restrictions and existing copyright laws. (Attachment B)

and,

I do not believe that the Agency should reproduce video cassette programs purchased from commercial distributors. We should pay the vendor for each and every cassette purchased and not enter into multiple copy reproduction to satisfy internal requirements. (Attachment C)

6. In general, every unauthorized use of copyrighted material, ^{1/} including use with source acknowledgment, ^{2/}

^{1/} 17 U.S.C.A. 1: "Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right: (a) to print, publish, copy, and vend the copyrighted work;"

^{2/} Henry Holt and Co., Inc., to Use of Felderman v. Liggett and Myers Tobacco Co., 23 F. Supp. 302, 304 (1938). "The fact that the defendant acknowledged the source from which this matter was taken does not excuse the infringement. While the acknowledgment indicates that it did not intend unfair competition it does not relieve the defendant from legal liability for the infringement." And, Toksvig v. Bruce Publishing Company et al., 181 F. 2d 664, 666 (1950): "Nor does the fact that defendants acknowledged the source from which the passages were taken excuse infringement."

is an infringement for which the law provides remedies. ^{3/}
These range from civil actions for injunctive relief and/or
money damages ^{4/} to criminal sanctions. ^{5/} Photographs and
television programs copyrighted within the United States or a
foreign country which is a signatory to the Universal Copyright
Convention are entitled to the protection afforded by U. S. law. ^{6/}

7. On the Government use of copyright material, "It is
general Government policy that copyrighted matter will not
knowingly be incorporated in publications prepared by or for the
Government except with the written consent of the copyright
owner." ^{7/} The procedural remedy available to a copyright owner
claiming an infringement of statutory copyright by or on behalf
of the United States is, however, controlled by statute. The action
must be brought within three years of the alleged infringement, it

^{3/} Alfred Bell & Co. v. Catalda Fine Arts, 191 F.2d 99.
"A copyright confers the exclusive right to copy the copyrighted
work and right not to have others copy it."

^{4/} 17 U.S.C.A. 101: "If any person shall infringe the copy-
right in any work protected under the copyright laws of the United
States such person shall be liable: (a) to an injunction restraining such
infringement; (b) to pay the copyright proprietor such damages as the
copyright proprietor may have suffered due to the infringement as well
as the profits which the infringer shall have made from such infringe-
ment,"

^{5/} 17 U.S.C.A. 104: "Any person who willfully and for profit
shall infringe any copyright secured by this title, or who shall knowingly
and willfully aid or abet such infringement, shall be deemed guilty of
a misdemeanor,"

^{6/} Am. Jur. 2d, Copyright and Literary Property, § 76. "The
Universal Copyright Convention was ratified by the United States Senate
in 1954 and came into force for the United States on September 16, 1955,
.... Basically this convention provides that each member nation shall
grant within its own borders the same treatment to foreign authors as it
accords to its own citizens."

^{7/} 41 CFR 5-54.202

must be brought in the United States Court of Claims and, prior to the commencement of such action, the head of the agency concerned has the statutory authority to settle the claim with the copyright owner and pay the compromised damages out of available appropriations. 8/

8. In discussions with representatives of your office, the case of The Williams & Wilkins Company v. The United States was raised. 9/ This case, a copyright suit under 28 U.S.C.A. 1498(b) is on point, particularly insofar as its lengthy discussion of the doctrine of "fair use" is concerned. However, it is our opinion that the case is so narrow in its application and its fact distinguishable, on at least one important point, that it does not significantly ameliorate the activities of your office vis-a-vis the law. The case arose because the National Library of Medicine (NLM), under the National Institute of Health (NIH) and the Library of NIH engaged in photocopying articles from medical and pharmaceutical journals which were published by plaintiff, The Williams & Wilkins Company of Baltimore. Defendant libraries were fairly select in their

8/ 28 U.S.C.A. 1498(b): "Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive remedy of the owner of such copyright shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 101(b) of title 17, United States Code: And provided further, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action,"

9/ U.S. Court of Claims, No. 73-68; Decided 27 November 1973.

response to requests for copies of articles and they had established guidelines on copying. Nevertheless, the libraries did copy articles and make them available--NIH to its personnel only, NLM to a wider audience including non-Government requesters. The court took judicial notice of the fact that both institutions are nonprofit in character and exist only to further the public health. In looking to the doctrine of "fair use," the court found that both libraries were rather restrictive in answering requests for photocopies of materials, particularly whole journals, lengthy articles or multiple copies of same, and that there was no evidence that plaintiff's business had been harmed in any monetary way. The court also examined the intent of Congress in establishing the NLM. Both the legislation establishing the NLM and the "Congressional declaration of purpose" makes it clear that Congress expected the library to make available photocopies of its holdings in the furtherance of its mission--"to assist in the advancement of medical and related sciences, and to aid the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health." 10 / 11/

10 / 42 U.S.C.A. 275

11 / 42 U.S.C.A. 276

(a) The Surgeon General, through the Library and subject to the provisions of subsection (c) of this section, shall--(1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertinent to medicine; (2) organize the materials specified in clause (1) of this subsection by appropriate cataloging, indexing, and bibliographical listing; (3) publish and make available the catalogs, indexing and bibliographies referred to in clause (2) of this subsection; (4) make available, through loans, photographic or other copying procedures or otherwise, such materials in the Library as he deems appropriate; (5) provide reference and research assistance; and (6) engage in such other activities in furtherance of the purposes of this part as he deems appropriate and the Library's sources permit.

* * *

(c) The Secretary is authorized, after obtaining the advice and recommendations of the Board (established under section 277 of this title), to prescribe rules under which the Library will provide copies of its publications or materials, or will make available its facilities for research or its bibliographic reference, or other services, to public and private agencies and organizations, institutions, and individuals. Such rules may provide for making available such publications, materials, facilities, or services (1) without charge as a public service, or (2) upon a loan, exchange or charge basis, or (3) in appropriate circumstances, under contract arrangements made with a public or other nonprofit agency, organization or institution. (Emphasis added.)

It is at this point that the case becomes distinguishable from the one presented by you. The Agency does not have an express statutory authority to photocopy. The court held that the practices of the libraries had, up to that time, been "fair" and that there had been no infringement of plaintiff's copyright. However, it felt compelled to explain its opinion by reemphasizing "four interrelated aspects" of the holding. First, the use was found to be "fair" on the basis of all the factors and elements of the case, none of which was controlling. Second, the holding of "fair use" was restricted to the type and context of use by NIH and NLM as shown by the record; no other case, set of facts or similar situations were passed upon. Third, the record failed to show a significant detriment to plaintiff but did demonstrate injury to medical and scientific research if the photocopying were found to be an infringement. Fourth, the court expressed its strong belief that the judicial doctrine of "fair use" is amorphous and open-ended and that there is a real requirement for Congress to act to further delineate the doctrine in the photocopying area.

9. In my discussions with representatives of your office, we also discussed the effect of classifying pictorial materials as a safeguard to possible claims of copyright infringement. It is important to emphasize the fact that classifying pictorial materials does not relieve an infringement, protects nothing and may, in actuality, be a detriment. Were the Agency to classify photographs which had been extracted from unclassified periodicals, it might be shown the classification was simply for the purpose of concealing a probable infringement and that concealment could be construed as "fraudulent." This would have the effect of tolling the three year statute of limitations, that is, extending the period for bringing an action until three years after plaintiff discovered the infringement. ^{12/} In addition, in view of the requirements of Executive Order 11652, effective 1 June 1972, it would appear that classifying such material is improper.

* ^{12/} Holmberg v. Armbrecht, 327 U.S. 392, 90 L. ed. 743 (1946); Baxter v. Curtis Industries, Inc., 201 F. Supp. 101 (1962); and Prather v. Neva Paperbacks, Inc., 446 F. 2d 338 (1971).

10. It is the opinion of this Office that the activities of your office, as described herein, except in those instances where you have purchased the right to use copyrighted pictorial materials, are probably violations of statutory copyright. Whether your unauthorized use of such materials can be considered "fair use" we just do not know. As in The Williams & Wilkins Company case, the final decision on any particular use depends on all of the facts. Accordingly, the first question asked in paragraph 3(a) of referent memorandum is answered in the negative. The second question asked in that same paragraph is answered as follows: We know of no "better way to use the photos that would preclude any possible claim that CIA was violating copyright laws." Notwithstanding, on the facts and the laws, we believe that within the context of your procurements and uses and restrictive procedures you impose, the risks to the Agency are minimal and that you may continue your activities with probable impunity. Should a question of impropriety arise, the Agency would attempt to negotiate a settlement with the complaining party per the provisions of 28 U.S.C.A. 1498 (b). This Office would, however, admonish you to continue adherence to your strict policies, as described in the three memoranda mentioned herein, particularly in turning away requests to reproduce expensive, commercially produced video tape cassettes because, as I advised previously representatives of your office, suits for copyright infringement almost always involve large sums of money.

11. With respect to the two questions asked in paragraph 3 (b) of referent memorandum, we would advise as follows: Recordings of U.S. television materials should not be classified while available for analyst review, and as noted in paragraph 9, super, to classify them would appear to be improper. Rather, it should be sufficient to control these as "Official Use Only."

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Assistant General Counsel

Atts

GMB:sm

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1 - OGC Subject:

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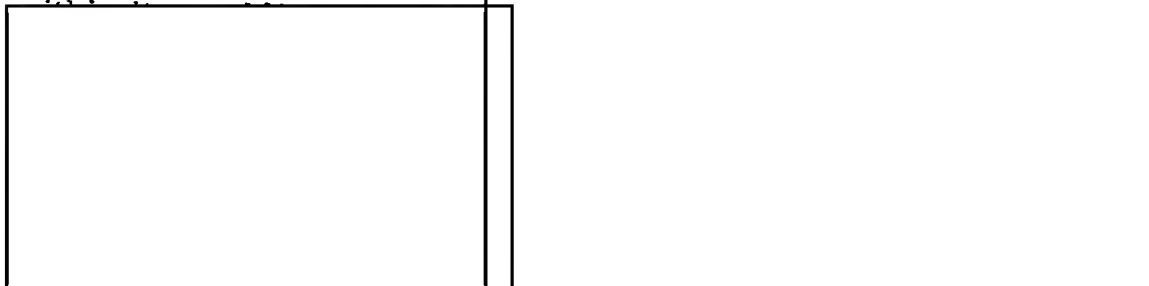
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Approved For Release 2003/05/27 : CIA-RDP84-00709R000300090001-0

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3. All allowances inuring to a Government employee are established by laws enacted by Congress. These and the regulations promulgated thereunder are the basic authorities from which all allowances flow. FOIAB5



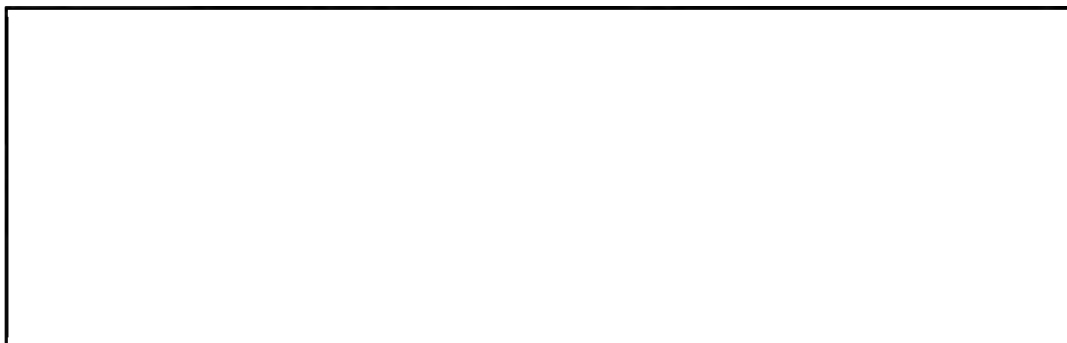
4. In providing for the travel and transfers of its employees within the continental United States, the only authority available is OMB Circular A-56, now superseded by the Federal Travel Regulations (FTR's) issued by the General Accounting Office (1 May 1973). Both within OMB Circular A-56, Section 4.1, and modified by the Agency as Attachment 3, Section 4.1, is the requirement that for real estate expenses to be reimbursable, a "permanent change of station . . . must be . . . authorized or approved and the old and new official stations located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, or the Canal Zone, . . .". In the FTR's at Chapter 2, Part 6 -- "Allowance for Expenses Incurred In Connection With Residence Transactions" -- the same condition precedent is present. In addition, at Section 4.1d of A-56 and Part 6 of the FTR's is the occupancy requirement: "The dwelling for which reimbursement of selling expenses is claimed . . ." must have been ". . . the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station."

5. On the question of whether the Agency has authority to waive these conditions precedent so that Mr. might be reimbursed, it is the opinion of the undersigned that only if there is a determination that this PCS move was occasioned by the peculiar and unusual nature of the Agency's business would reimbursement be proper. Many Government agencies transfer employees both within the United States and to posts outside the United States and the limitations on reimbursement of real estate expenses on PCS moves to and from outside of the United States are equally applicable to them.

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Assistant General Counsel

Attachments

References (a) and (b)

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- 1 - OGC Subject: ALLOWANCES
- 1 - GMB Signer
- 1 - Chrono

SECRET

OGC 74-0697

24 April 1974

MEMORANDUM FOR: Chief, Support Element Services Staff, DDO

SUBJECT: Sick Leave -

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1. You have requested the opinion of this office as to whether a retroactive adjustment of approximately 200 hours can be made with respect to subject's sick leave benefits.

2. Subject's contract of employment dated 6 December 1957, was amended on 5 June 1962 to provide for special travel from his overseas post to the United States and return for a thirty calendar day vacation with pay. The travel was to commence on or about 21 September 1962. The contract was also amended to provide subject with sick leave benefits as follows:

(b) Effective the date of your return to your permanent post of assignment following your vacation in the United States, subparagraph (b) of paragraph six (6) entitled "Benefits" is deleted and in lieu thereof is substituted the following:

"(b) You will be entitled to sick, annual and home leave (including travel expenses incident thereto) equal to and subject to the same rules and regulations applicable to Government appointed employees. Annual leave may only be taken at times and places approved in advance by appropriate Government representatives."

3. For various administrative reasons, subject did not take his vacation as scheduled and did not return to the United States until approximately 22 June 1964 and at that time he began earning government leave benefits.

4. It is clear that if subject had taken his vacation as scheduled on 21 September 1962, he would have started earning leave benefits on approximately 31 October 1962 in accordance with the terms of the amendment to his contract. It would seem to be a strange circumstance to deny an individual benefits he otherwise is entitled to merely because he delayed his vacation, especially when the reasons for the delay were beyond his control. The clear intent of the amendment to the contract was to provide leave benefits, effective on or about 31 October 1962. In these circumstances, it is our opinion that a retroactive adjustment of his sick leave benefits is in order.

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Assistant General Counsel

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OGC 74-0710
24 April 1974

MEMORANDUM FOR: DD/M&S

SUBJECT: Comparison of Overtime Requirements
Under CIA Regulations, Title 5 and
The Fair Labor Standards Act

REFERENCES: a) Civil Service Commission Memo to
D/Pers, dtd, 19 Apr 74, subj, Proposed
Interim Instructions to Implement
the Fair Labor Standards Act

b) Memo fr C/PMCD to D/Pers, dtd,
19 Apr 74, subj, Fair Labor Standards
Act Amendments of 1974

1. This is in response to your request of 22 April for a breakout of the requirement to pay for overtime work under current CIA regulations, Title 5 of the U. S. Code, and the Fair Labor Standards Act, as amended.

2. As you know, on 8 April the President signed P.L. 93-259, the Fair Labor Standards Act Amendment of 1974. The amendment of Section 3(e) of the Act, the "coverage" section, to include for the first time "any individual employed by the Government of the United States -- in any executive agency (as defined in Section 105 . . .)" of Title 5 of the U. S. Code, causes the Act to be applicable to most Government agencies including CIA. In addition, the Civil Service Commission has the statutory responsibility of administering the Act within most Government agencies, including CIA. Per Reference A:

The FLSA, as amended by P.L. 93-259, does not repeal, amend, or otherwise modify any existing federal pay laws. Rather, the FLSA establishes a minimum standard to which covered employees are entitled. To the extent that the FLSA would provide a greater pay

benefit to an employee (e.g., a higher overtime rate) than the benefit payable under other existing pay rules, the employee is entitled to the FLSA benefit. If other existing pay rules provide a higher benefit, of course, the employee continues to receive that benefit. No Federal employee's pay or pay related benefits (overtime, Sunday pay, etc.,) will be reduced to conform to the FLSA minimum standards.

3. The following are general statements on the requirements for overtime compensation, or compensatory time off in lieu thereof under CIA regulations, Title 5 of the U. S. Code, and the FLSA. Certain exceptions, not applicable to the great majority of Agency and other federal employees, have been omitted.

A. What Hours of Work are Considered Overtime Hours?

25X1A i. CIA: "Compensable overtime is that work performed by an employee in excess of the normal basic workweek which has been authorized by a designated senior official as compensable."

[] "The basic 40-hour workweek consists of five consecutive duty days, normally Monday through Friday."

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ii. Title 5: "Hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or . . . in excess of 8 hours in a day, performed by an employee are overtime work . . ." 5 U.S.C.A. 5542(a).

iii. FLSA: Generally, ". . . no employer shall employ any of his employees . . . for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours specified at a rate not less than one and one-half times the regular rate at which he is employed. Sec 7(c). Under the FLSA overtime is compensable if the employer suffers or permits it to be worked. "In other words, for nonexempt employees overtime need not be 'officially ordered or approved' as is presently required.

Under the concept, any work performed by a nonexempt employee for the benefit of the agency, whether requested or not, is working time if the employer knows of or has reason to believe it is being performed. Thus a nonexempt employee who commences work prior to the scheduled shift, or continues to work during meal periods or at the end of the shift, even though the work was not requested, is entitled to compensation for overtime work." (In this regard see paragraph 7c, Ref. A.)

B. Rate of Overtime Compensation.

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i. CIA: "The overtime pay rate is one and one-half times the hourly rate of basic salary but will not exceed one and one-half times the minimum scheduled rate for GS-10."

[redacted] Thus, no overtime hourly rate may be greater than one and one-half times the first step of a GS-10.

ii. Title 5: Essentially the same provisions as followed by CIA. 5 U.S.C.A. 5542(a)1.

iii. FLSA: ". . . a rate not less than one and one-half times the regular rate at which he . . . (the employee) . . . is employed." Sec. 7(a). Note that "regular rate" includes the scheduled or basic rate, night differential, and Sunday premium pay. (See paragraph 9c, Ref. A.)

C. Compensatory Time.

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i. CIA: a) Employees, GS-11 and below, may, at their request, receive compensatory time off in lieu of payment for directed overtime; b) Employees, GS-12 through GS-14, may also receive compensatory time off if they request it, but only to the extent the hours are otherwise compensable as overtime;

[redacted] c) Also, employees, GS-15 or above, may receive compensatory time only to the extent the hours are compensable as overtime. [redacted]

ii. Title 5: "The head of an agency may --

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(1) on request of an employee, grant . . . compensatory time off . . . instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for a GS-10 shall be granted compensatory time off . . . instead of being paid for that work." 5 U.S.C.A. 5543. In other words, for those employees who make more than the maximum basic GS-10, the head of an agency may direct that they only receive compensatory time.

iii. FLSA: No comparable provision. "The FLSA requires that a non-exempt employee be compensated for hours in excess of 40 hours a week at a rate not less than one and one-half times his regular rate. This means that compensatory time off for overtime work is not appropriate for a non-exempt employee. A non-exempt employee must be paid for overtime work." Subparagraph 9d, Ref. A.

D. Exemptions From Overtime.

i. CIA: a) Employees GS-11 and below, may receive overtime for all hours of directed overtime except, that in any pay period, an employee's aggregate compensation (basic salary, overtime, holiday pay, annual premium pay, night differential, or compensatory time off in lieu of overtime) may not exceed the maximum scheduled rate for a GS-15; b) GS-12 thru GS-14 employees may NOT be compensated for the hours of directed overtime between 40 and 48 either by overtime pay or compensatory time, UNLESS the directed hours are: "on a position which requires substantial amounts of overtime work on a continuing basis and the productivity is predominately measurable in units of production or hours of duty performed; on any day during a work period of seven or more consecutive days;" or, "on a job the duties of which are substantially unrelated to the primary assignment." The same aggregate compensation limitation applies with respect to exceeding the maximum scheduled rate for a GS-15; c) GS-15 employees may not receive overtime or compensatory time in lieu thereof, except in the case of a "production" oriented position or unless the second job concept mentioned above applies. In addition, the aggregate compensation limitation applies.

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ii. Title 5: "An employee may be paid premium pay . . . " (overtime, annual premium pay, Sunday and holiday pay) ". . . only to the extent that payment does not cause his aggregate rate of

pay for any pay period to exceed the maximum rate for a GS-15." 5 U.S.C.A. 5547.

iii. FLSA: There are a host of exemptions from both the minimum wage and overtime requirements of the Act, but those most applicable to the Agency are the so-called executive, administrative, and professional exemptions. Sec. 13. At Ref. A, Attachment 1, pages 4 and 5, the Commission provides guidance for determining the exempt or nonexempt status of employees within the three categories. Department of Labor regulations which define and delimit the three terms are provided for your comparison as Attachment 1 hereto.

4. The identification of employees as "exempt or non-exempt" and the determination of payment for overtime under the provisions of both the Agency's regulation and the FLSA are the chief problems with which we are now concerned. However, existing CIA occupational categories of employees follow an occupational coding system similar to that of the Civil Service Commission. It is proposed that the Office of Personnel identify all employees as "exempt" or "nonexempt" by following the CSC guidelines, within the next few days. Thereafter, we will be better able to determine the extent of the problem and how Agency regulations can be changed to solve it. In addition, it is recommended that the Office of Finance be charged with developing a procedure to accomplish the dual computation of overtime as required by the Act. By the terms of the Act, the Commission is relieved of its administration with respect to individuals employed in the Library of Congress, United States Postal Service, Postal Rate Commission, and Tennessee Valley Authority.

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Chief
Position Management & Compensation Division

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Assistant General Counsel

Attachments

cc: Office of Finance
OJCS
D/Pers 25X1A
C/CMPD -
General Counsel, NSA

GMB:sm

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1 - GMB Signer
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Note: Attachments on file in OGC Library.

Next 1 Page(s) In Document Exempt

OGC 74-0767

6 May 1974

MEMORANDUM FOR: Deputy Director of Personnel

SUBJECT : EOD Travel of [REDACTED]

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REFERENCES : A. Your memo dtd 5 March 74, same subject
B. OGC 74-0887 dtd 14 Jan 74, same subject

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Ben:

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1. I apologize for the all-too-long a time it has taken me to get back to you on the [REDACTED] case. When viewed against our overall case-load, Mr. [REDACTED] problem is certainly one of our smaller ones. The "smaller" cases, however, are often the most difficult to resolve, and his case certainly falls into this category.

2. The Federal Travel Regulations provide that travel and transportation expenses and applicable allowances are payable in the case of a shortage-category appointee from his place of actual residence at the time of appointment to permanent duty at official stations within the United States. FTR 2-1.3(c). A new appointee is an individual who is first appointed to Government service. FTR 2-1.5e(1). The effective date of appointment is the date on which the appointee reports for duty at his first official station. FTR 2-1.4j. The expenses for travel, transportation, and allowances shall not be allowed unless and until the new appointee to a shortage-category position agrees in writing to remain in Government service for 12 months following the effective date of his appointment. FTR 2-1.5a(1)(a) and FTR 2-1.5f(2)(a). Authorized expenses may be paid to the individual concerned even though he has not been appointed at the time travel to his first official station is performed. FTR 2-1.5f(2)(b). Mr. Greg Haller of the General Services Administration is responsible for interpreting the Federal Travel Regulations. He has explained to me that FTR 2-1.5f(2)(b) permits travel to the first official station before appointment, but the travel must be incident to the appointment and undertaken at the direction of the prospective employing agency.

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3. The facts in this case are clear. Mr. [] travel from California to Michigan was not incident to his appointment except in the most vague and indefinite way. We have an Office of Personnel letter to him advising him not to begin travel until he has received written authorization to do so, and we have his own statement that he was not depending upon final job offers until the end of the summer, either from the Agency or other organizations. Thus, I would have a legal objection to interpreting his early June move from California to Michigan as being incident to his appointment and undertaken at the direction of the Agency. The additional factors you mention--when the Office of Personnel could have telephoned [] and his wife's maternity condition--are not, I am sorry to say, pertinent to the question of his travel entitlement.

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25X1A 4. You ask if we may look at Mr. [] place of residence at the time of selection in a more liberal way and find that he was "selected" some time before 7 June 1973, subject only to clearances which came through on 22 May 1973. The question of "selection for appointment" (paragraph 6, OGC 74-0081) is a problem of my own making. I did not accurately quote the Federal Travel Regulation which states that:

...travel and transportation expenses and applicable allowances...are payable in the case of...(c) new appointees, as provided in 2-1.5 /shortage-category appointees/, from their places of actual residence at the time of appointment to permanent duty at official stations.... FTR 2-1.3(c).

In relation to the subject of travel expenses for shortage-category appointees, the only time the FTR uses the word "selection" is in connection with limits on travel expenses, i.e.,

/t/he limit on travel and transportation expenses in the individual case is the cost of direct travel or transportation as allowable between the individual's place of residence at the time of selection or assignment and the official station to which appointed or assigned; FTR 2-1.5f(5).

I again contacted Mr. Haller to pursue a definition for the word "selection" as used above. He obtained an informal opinion from the General Accounting Office that "place of residence at the time of selection" means "place of actual residence at the time of appointment". It may be of interest to you to know that both GSA and GAO do not give the Federal Travel Regulations a liberal interpretation. I believe we should take a similar view. In summary, I must state a legal objection to construing the regulations and the facts in [] case in such a way as to enable the claim to be approved.

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Office of General Counsel

cc: D/Fin
C/OP/SPD/PPB
DDM&S w/their background

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1 - AEG Signer
✓ Chrono

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OGC 74-0832

P

10 May 1974

MEMORANDUM FOR: Chief, EA Personnel

SUBJECT : Family Visitation Travel

25X1A

REFERENCE : Telepouch [] C/EA Div.,
fm COS Vietnam, dtd 8 May 74

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1. [] of your office recently requested our opinion concerning the question raised in Referent. Therein, the Chief of Station, Vietnam requests clarification on the monetary limitations for family visitation travel (FVT).

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[]
[] In part, P.L. 90-221 authorizes payment of:

The travel expenses of officers and employees of the Service for up to two round trips each year for purposes of family visitation...except that, with respect to any such officer or employee

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whose dependents are located abroad, the Secretary may authorize such additional trips as he deems appropriate not to exceed the equivalent cost of two round trips of less than first class to the District of Columbia, ...
Provided, That the facilities of the Military Airlift Command shall be utilized whenever possible for travel authorized.../herein/.

4. The legislative history of P.L. 90-221 reflects that there was a conscientious effort not to provide a specific monetary amount in the amendment. The Congress realized that the circumstances in Vietnam that gave rise to the amendment may occur in other countries where travel to the United States may be more expensive. Changes in plane fares also made a dollar figure unrealistic. Therefore, they set a maximum allowance as the cost of two round trips in each year at a cost of less than first class travel, i.e., economy or tourist fare, between the post where the employee is assigned and Washington, D.C. Families living abroad may be visited more frequently so long as the maximum is not exceeded. The amendment, however, does not guarantee an employee all these trips each year for visitation. The availability of FVT for an employee is at all times subject to the needs of the Agency. Further, no cash payments accrue to the employee for any trips authorized but not made. In order to keep the cost to a minimum the Congress included a requirement that travel under the authority of the amendment be by Military Airlift Command aircraft wherever possible.

5. The Agency implemented the adoption of the FVT provision of P.L. 90-221 into [REDACTED], wherein at paragraphs 2(a) and (b) it is stated in part:

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(a) Travel expenses may be paid for up to two round trips a year by the employee for the purpose of visiting his family in the United States.

* * *

(b) When the dependents are located outside the United States...more than two family visitation trips may be permitted a year, but reimbursement for such travel may not exceed the cost of two round trips by less than first class air to the District of Columbia.

6. It is the opinion of this Office that these regulations are consistent with the statutory authority on which they are based. Further, while not mandatory, they are consistent with the Foreign Affairs Manual. The Uniform State/AID/USIA regulations for visitation travel are outlined therein at 3 FAM 699.

7. Accordingly, it is the opinion of this Office that for the Vietnam Station Travel Directive to be consistent with the statutory and regulatory authorities they must reflect the following:

a. If the employee's family is located in the United States, he may be granted as many as two trips a year to visit them.

b. If the employee's family is located outside the United States, he may be granted as many trips as the cost for which does not exceed the cost of two round trips by less than first class air to the District of Columbia.

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Assistant General Counsel

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RETIREMENT RATIONALE

1. The production of intelligence bearing on the national security for use at the highest levels of policy determination of the United States Government is a responsibility of the gravest note. The organization bearing this responsibility should be staffed with persons of the highest available intellect, integrity, professionalism, dedication, perspicacity, and dynamism. The Central Intelligence Agency's retirement policy is an essential element of its program for ensuring that its staff possesses these attributes to the highest degree feasible.

2. The personnel staffing program of the Agency is based on the concept of selective recruitment for career employment and managed career development. Selection standards are designed to accept only persons with the highest qualifications and potential for development. The Agency's development program provides a career-long blend of formal training and managed progression through appropriate assignments of increasing breadth and responsibility.

3. The goal of the Agency's development program is to place the best available employee in every position. Promotion policy reinforces career development by advancing those who excel and have the capacity for further growth. The Agency's rigorous system for evaluating the performance of its employees is designed to assure high levels of effectiveness. Those who are unsatisfactory are separated; those who are marginal or unlikely to find full career satisfaction are counseled to resign.

4. Intelligence activities are characterized by continuous changes--in requirements, methods, techniques, processes, and emphases. As these changes occur, the Agency reassigns its career staff employees and provides supplementary training as required. To the extent that these measures do not meet the needs, requisite skills, experience, and special abilities are acquired by the employment of new personnel.

5. Because there are practical limits to the size of the Agency, the requirement for new employees and the operation of the career development program cannot be accomplished without attrition. Part of this attrition is provided by involuntary separations and resignations through the Agency's system for evaluating employee performance. Other vacancies are provided by voluntary retirement and resignation and by death and disability. But together these do not create a sufficient number of vacancies.

6. The Agency's retirement policy is an integral part of its program to maintain the high level of performance required by its mission and responsibilities. It also provides the additional attrition necessary for career development and the acquisition of new employees. This policy, adopted in 1959, generally limits the career span of its employees to age 60.

7. Agency employees, with some exceptions, have all attained their career peaks several years before reaching age 60. They have had a full CIA career and have made their maximum individual contribution to their Government. Exceptions specifically contemplated are individuals who possess rare scholarship and talents that would be difficult to replace in the normal course of career development and whose retirement would not be in the best interests of the Government. In some cases retirement at 60 may result in loss of valuable experience and know-how and only generate a recruitment and training requirement.

8. It is recognized that enforcement of the policy to retire employees at age 60 occasionally subordinates the personal desires of the individual to the best interests of the Government. This is usually the case when it is necessary for any reason to separate an employee. The normal voluntary retirement age for most Federal employees is 65, and the compulsory age under the Civil Service system is 70. Similar retirement ages for CIA would result in the gradual accumulation of an excessive number of employees of declining performance, whether due to declining health, motivation, or drive or to inability to adapt to change. The effectiveness with which the Agency fulfills its extraordinary responsibilities depends entirely upon the highest possible level of effectiveness in staffing the Agency. Consequently, extraordinary action toward attaining

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and maintaining this goal--such as effecting a retirement policy more stringent than that for the Federal service in general--is warranted.

9. Retirement at age 60 may appear less appropriate for those Agency employees who are in positions that are not unique to intelligence activities. In theory, it might be possible to identify all such positions and exempt the incumbents thereof from the retirement policy.

10. There are two reasons for not doing so. Attempts to formulate criteria of differentiation would generate new problems of morale and administration. The creation of exempt categories of employees would foster odious comparisons. It would thwart the implementation of the general retirement policy indefinitely as groups and individuals pleaded their individual cases.

11. The more fundamental reason for not exempting certain categories of Agency employees is that the work of the Agency must be performed with utmost responsiveness. This requires a general state of mind on the part of all employees that timeliness is critical, accuracy is imperative, and absorption with the task at hand takes priority over personal distractions. Advancing years inevitably bring about a lessening of work vigor and enthusiasm. The larger the proportion of older employees, the greater the debilitating effects on the tenor of the Agency.

12. In summary, the age 60 retirement policy is a key element of the Agency's efforts to attain excellence in its staffing. Without the policy the entire personnel program of the Agency would be impaired. The most vigorous and productive individuals, finding themselves stymied, will leave the service or will never be persuaded to enter in the first place. By shortening the career span of all employees, service in intelligence will continue to be highly attractive to outstanding young men and women. In the end, our national intelligence objectives will be best served.

CONFIDENTIAL

Executive Registry

68-2186

30 April 1968

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Retirement Policy

1. This memorandum submits recommendations for your approval in paragraph 4.

2. During the past several weeks I have reviewed the Agency's retirement policy with the Deputy Directors, the General Counsel, the Inspector General, the Director of Personnel, and the Chairman of the CIA Retirement Board.

3. Our discussion and conclusions are summarized as follows:

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- b. The principal issue of our discussion, and from which all others flow, is whether the Agency should have a policy requiring retirement earlier than provided by law under the Civil Service Retirement Act or the CIA Retirement and Disability System for GS-18s and above. After considerable discussion, it was the consensus that there should be an early retirement policy with a stipulated age at which most employees

GROUP 1
Excluded from automatic

should leave. At the same time, it was recognized that, because the Directorates have different problems, Agency policy should be flexible enough to permit liberal exceptions when justified. This appears to be particularly true in the Intelligence Directorate because of the various types of professional employees needed and because these professionals often are individuals who have prepared themselves through academic study for long-range professional careers where an arbitrary retirement age would not be a condition of employment. Rationale in support of such a policy is attached at Tab A.

c. Having reached agreement that the Agency should have an early retirement policy with provision for exceptions to meet particular needs or circumstances, we then discussed the types of exceptions that could be identified and action recommended in advance. General agreement was reached on the following:

(1) There should be no general exception for employees who argue that at the time they entered on duty they were led to believe (or now believe) that they had the right to work until age 65 or 70, depending on the retirement system in which they participate.

(2) There is a small group (12) of Agency employees who will not have 12 years of creditable service by their scheduled retirement date. We feel that these employees, as a group, should be permitted to remain on duty until they accumulate 12 years of service when they earn the right to continue important statutory hospitalization and life insurance coverage.

(3) As originally conceived in 1959, our early retirement policy expected employees to retire at age 60 with 30 years of service or at age 62 with at least 5 years of service. When the Civil Service Retirement Act was amended in 1966 to include a provision for optional retirement at age 60 with 20 years of service, Agency policy was in turn revised. There were some employees who prior to the revision of Agency policy had been informed

that their scheduled retirement would be at age 62 and presumably planned accordingly. With the change, their scheduled retirement age was lowered to 60. We feel that these employees should be permitted to remain on duty until age 62 if they so request. This does not include those employees who at age 60 have at least 30 years of service since this was a requirement under the earlier Agency policy.

(4) An overall exception should be made for the group of printers (57) who were induced to transfer from the Government Printing Office to the Agency with the assurance that they would not lose any benefits.

(5) There should be no overall exception for lower graded clerical employees. Each such case should be considered on its own merits.

(6) There should be no overall exception for employees with technical skills in grades GS-7 and below even though it might be difficult to recruit replacements and their loss would create training problems. Each such case should be considered on its own merits.

(7) No overall exception should be made for employees merely because they are writing Agency history.

4. It is recommended that:

a. Agency policy continue to provide that employees generally will be required to retire at age 60 or as soon thereafter as they are eligible for optional retirement under the law, regardless of whether they are covered by the Civil Service or the CIA retirement system.

b. Exceptions to the general policy be considered by the Director on an individual case basis when requested by the Head of Career Service or a Deputy Director.

SECRET

c. Overall exceptions as indicated in paragraphs 3. c. (2), (3), and (4) above be approved.

25X1A

[Redacted Signature]

L. K. White
Executive Director - Comptroller

Attachment
Rationale

CONCUR:

25X1A

[Redacted Signature]

Deputy Director
25X1A for Support

[Redacted Signature]

25X1A Deputy Director
for Intelligence

[Redacted Signature]

General Counsel

25X1A

[Redacted Signature]

Deputy Director
for Plans

25X1A

[Redacted Signature]

25X1A Deputy Director
for Science and Technology

[Redacted Signature]

Inspector General

The recommendations contained in paragraph 4 are approved.

25X1A

[Redacted Signature]

Richard Helms
Director of Central Intelligence

3 May 1968.

Date

SECRET

SUBJECT: Retirement Policy

Distribution:

- 0 & 1 - D/Personnel
- 1 - ExDir-Comp
- 1 - ER
- 2 - DD/S
- 1 - DD/P
- 1 - DD/I
- 1 - DD/S&T
- 1 - General Counsel
- 1 - Inspector General
- 1 - C/BSD/OP
- 1 - DD/Per/PC

MEMORANDUM FOR: General Counsel

SUBJECT : Early Retirement Policy--Review of OGC
Opinions and P.L. 93-259

I

1. The record as reconstructed from OGC files is not altogether clear as to when and why the Central Intelligence Agency (CIA) established a retirement age for its employees which is below the mandatory age followed by other Government agencies. It appears that in 1959 a decision was made at the highest level of the Agency that all employees were expected to retire as soon as they became eligible to do so without suffering a reduction in their annuity.* This meant that employees would retire at age 60 with 30 or more years of service or at age 62 with less than 30 but more than five years of service.

FOIAB5

FOIAB5

The 1966 amendments to the Civil Service Retirement (CSR) system permitted participating employees to retire at age 60 without a reduction in their annuity if they had at least 20 years of service. Thereupon, Agency policy was modified and all Agency employees were expected to retire at age 60 if they had at least 20 years of service.

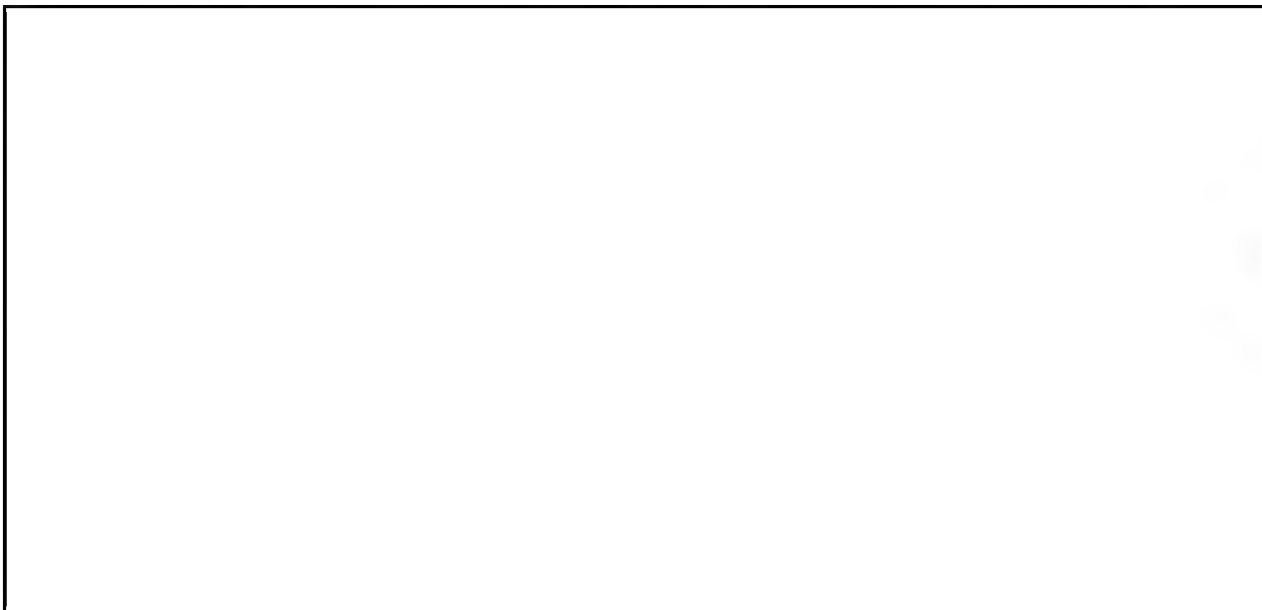
2. Office of Personnel memoranda available in OGC indicate that the early retirement policy was adopted in 1959 because of the long-range concern and the conviction that the Operations Directorate (and certain support offices) could not be effectively staffed with a substantial number of employees over age 60. In addition, the Operations Directorate (and certain support offices) had a pronounced age hump as a result of the employment therein of large numbers of World War II veterans and employees of CIA predecessor organizations. The early retirement age was made Agency-wide for the sake of uniformity of policy, and there are no records in the Office of General Counsel (OGC) of discussions between 1959 and 1965 as to the need for or the ultimate impact of a single policy applicable to all elements of the Agency and all levels and fields of employment.

* The development and implementation of the Agency's retirement policy is set out in detail in the DDS Historical Series, OP-4, dated June 1971. A memorandum for the DCI from the Director of Personnel dated 17 September 1959 first recommended the early retirement policy.

3. It should be noted that up until 1965, the Office of General Counsel had not issued an opinion concerning the early retirement policy.**



4. In 1967, the Director of Personnel requested that the Director establish a senior task force to review the Agency's early retirement policy. He noted that resistance to and resentment of the age 60 retirement was increasing and that it seemed unfair to employees to whom the policy was not a known and accepted condition of employment at the time of original employment. (It appears that a statement of the Agency's early retirement policy was first set forth in a Headquarters Regulation in 1961). The Director of Personnel also argued that the passage of the CIAR legislation satisfied the original objectives of the policy, that the number of extensions in service were growing rapidly, and that the Agency would not (he was told) enforce the early retirement policy, but employees did not know this.



** The General Counsel was a member of the Career Council which had approved the proposal initially in 1959. He was thereafter Chairman of the Retirement Board.

6. Perhaps here a digression from the chronology should be made in order to mention a few facts about the CSR system. Public Law 854 of July 31, 1956 (70 Stat. 736) provided that mandatory separation under the CSR system was at age 70. (70 Stat. 748.)

FOIAB5

FOIAB5

FOIAB5

Today, section 8335 of Title 5 of the U.S. Code still provides that mandatory separation under the CSR system is not until age 70. Sections 8331 and 2105 of Title 5 indicate that Agency employees, if not covered by another retirement system for Government employees, do come under the applicable provisions of Title 5 pertaining to the CSR system.

7. In early 1968, an internal OGC memorandum was prepared which discussed rationales for early retirement. The paper suggested that an employee did not necessarily have to be a member of the Operations Directorate to occupy a position of considerable stress and demand or occasionally face physical discomforts, danger, or endure other hardships. The paper also stated that it was difficult, however, to make a strong argument that professionals in the Intelligence and Science and Technology Directorates (the analysts) who are approaching age 60 have (because of their age) lost their ambition, were not performing satisfactorily, or were not up-to-date in their disciplines. A more persuasive factor mentioned in the paper is the statement that persons nearing 60 control the output of younger men, whose attitudes and thinking might be more current and who are probably in less of an "intellectual rut". Observations have been made by sociologists, etc., that there often develops within large, structured organizations a bureaucratic malaise which is more pronounced among older persons, particularly those who occupy middle-level positions and who are aware that they are at the apogee of their careers.

8. The General Counsel in early 1968 revised a paper prepared by the Deputy Director for Support (DDS) which upheld the Agency's early retirement policy. A few months later he responded to a proposal from the DDS, who suggested that the Agency might develop an incentive compensation program to encourage early retirement, stating that such a program was fraught with legal problems but that it might work under certain conditions. The details of such a program would have to be worked out well in advance of its implementation. The Voluntary Investment Plan (VIP) is an indirect result of Agency efforts to make retirement financially more attractive.

9. The early 1968 papers described above culminated in a 30 April 1968 memorandum from the Executive Director to the Director concerning the Agency's early retirement policy. The Director approved the continuance of the policy that employees generally would be required to retire at age 60 or as soon thereafter as they were eligible for optional retirement, regardless of whether they were covered by the CSR or CIAR system. A few overall exceptions were made affecting about 100 persons, most of whom were printers induced to transfer from the Government Printing Office to the Agency. No other general exceptions to the rule would be considered, but individual cases would be examined in the future by the Director.

10. No other documents on the subject of retirement age appear in OGC files until 1972. In November of that year, the General Counsel sent a memorandum to Mr. Colby concerning the President's memorandum ordering an end to any discrimination in federal employment based on age. The General Counsel contended that the Agency did not contradict the President's wishes because our retirement policy was not the type of discrimination he was banning. The General Counsel drew a distinction between general employment practices and the Agency's career philosophy and suggested that the Agency's policy was no different in principle from the CSR's age 70 statutory limitation and the CIAR's age 60 statutory limitation.

11. What seems to be reflected in the papers referred to above and what seems to have evolved is that the Agency's early retirement policy is not now based so much on the old rationale of "hardships", "dangers", "burning-out", etc., but on the new rationale that it is an effective and efficient management tool. As a management tool, it helps management meet the declining personnel ceilings that have been imposed upon the Agency in recent years.

II

12. On 8 April 1974 the President approved P.L. 93-259 (88 Stat. 55), known as the Fair Labor Standards Amendment of 1974. Almost all the sections of the Act amend or repeal sections of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 201-219). There is

tucked in at the end of the Act, in section 28 of the 29 sections comprising the Act, several amendments to the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621-634). The key amendment is one which states that the policy of Congress is that there shall be no discrimination on account of age in federal government employment.

13. The amendment provides that:

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States)...in executive agencies as defined in section 102 of Title 5,...shall be made free from any discrimination based on age.

The Civil Service Commission is authorized to enforce this provision and to issue whatever regulations are needed to carry out its responsibilities. The Commission is to review and evaluate all agency programs designed to carry out this policy and to provide for the acceptance and processing of complaints of discrimination in federal employment on account of age. An aggrieved party may bring a civil action in a federal district court to obtain whatever legal or equitable relief will effectuate the purpose of the amendment. The amendment also provides certain time periods within which the aggrieved must give notice of an alleged unlawful practice and notice of an intent to file a civil action.

14. The amendment further stipulates that:

(t)he head of each...agency...shall comply with (the)...regulations...of the Civil Service Commission....

The Commission is given the authority to establish reasonable exemptions from the law, but only when it can establish a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

15. The legislative history of P.L. 93-259 states that the amendments to the ADEA are a logical extension of Congress' decision to extend FLSA coverage to federal, state, and local government employees, which is done in other sections of P.L. 93-259. The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions or privileges of employment. Protection under the ADEA is limited, however, to individuals who are between 40 and 65 years of age.

16. The Senate bill amending the FLSA (S. 2747) was passed in lieu of the House bill (H.R. 12435) but the Conference Committee substituted for the language of the Senate bill much of the text of the House bill. The U.S. Code Congressional and Administrative News sets out in the legislative history of P.L. 93-259 only the House Report and the House Conference Report.

17. The Senate Conference Report is set out in the Congressional Record (Senate) of 28 March 1974. Senator Williams of New Jersey informed his colleagues on the floor of the Senate that despite a strenuous effort by the Senate conferees, they were forced to yield to the House on certain major issues. A section by section analysis of the Senate Conference Report is included in the Record. Under section 28, Nondiscrimination on Account of Age in Government Employment, the Senate Conference Report states:

Questions have been raised about the applicability of the Age Discrimination provisions to the discretion which now may rest in the heads of certain executive agencies to terminate an employee in the interests of the national security of the United States.

It was not the intent of the conferees to affect the exercise of such discretion, other than by barring actions which, in fact, would be illegal, such as a termination of employment or a refusal to hire based on age.

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18. Until the Civil Service Commission issues implementing regulations or begins to consider categories of employees exempted from the new law, we cannot be certain that if faced with a court test of our early retirement policy that we will prevail. The Agency can, of course, seek a blanket or limited exemption from the application of the law. A limited exemption presumably would cover only certain categories of professional employees participating in the CSR system.

19. It is noteworthy that the ADEA in prohibiting discrimination for age in the private sector specifies in 29 U.S.C. 623(f) three areas beyond the scope of the Act. Exemptions are granted for employers:

(1) to take any action otherwise prohibited where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiations are based on reasonable factors other than age;

(2) to observe the terms of a bona fide seniority system or other employee benefit plan such as a retirement plan; and,

(3) to discharge or otherwise discipline an individual for good cause.

In comparing the language of section 623(f) with the language of the 1974 amendment, it seems that Congress has been "more generous" to the private sector. Perhaps the Commission's regulations will "even the score", but we cannot be too optimistic.

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Office of General Counsel

Attachment:

DCI approved Retirement Policy
(ER 68-2186, dtd 30 Apr 68)

DCI & DDCI

cc: DDO

DD/M&S

DDI

DD/S&T

IG

Comptroller

D/Pers

Executive Secretary

AEG: cap

Distribution:

✓ Original - RETIREMENT

1 - AEG Signer

1 - Chrono

5 June 1974

The Honorable Carla A. Hills
Assistant Attorney General
Civil Division
Department of Justice
Washington, D. C. 20530

Dear Mrs. Hills:

I have your letter of May 29th regarding new procedures within the Civil Division designed to bring cases of special significance to your attention.

As you are aware, we have been working very closely with your Division, specifically Mr. Irwin Goldbloom and Mr. David J. Anderson, on the [REDACTED]. Obviously, this case has special significance and has been treated as such from its inception, and our relationships with Mr. Goldbloom and Mr. Anderson have been extremely close, more nearly representing a law firm partnership than representatives of two different agencies. Also, when we have worked with your Division on other cases, such as a recent contract fraud case when we worked with Mr. Irving Jaffe, the Division has always been cooperative and recognized the unusual aspects of the cases. As it turns out, almost all of the cases we send to the Department of Justice are unusual because of the unique mission of this Agency.

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I can think of no way that we can improve our working relationships with your Division. Certainly, if there are any matters which I feel need your personal attention, I shall not hesitate to be in direct contact with you.

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Sincerely,



John S. Warner
General Counsel

OGC:JSW:jeb

cc: DCI

OGC chrono

subject Liaison-Governmental



Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

May 29, 1974

Mr. John S. Warner
General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Warner:

The Civil Division has initiated a practice whereby cases which are of special significance to a client agency or which are likely to create a noteworthy precedent are called to my attention. I try to follow the progress of these special cases personally and through my Deputies, and where necessary, to implement special procedures in their handling. As you may know, the Civil Division is responsible for supervising more than 27,000 cases exclusive of Custom court cases. Therefore it is necessary that we exercise care to designate only those cases which have special significance for special handling.

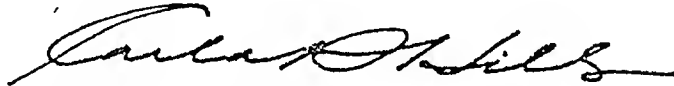
Although the chiefs of our various sections to whom the incoming cases are assigned are highly competent in recognizing cases of special significance, it sometimes occurs that the papers forwarded do not set forth the true significance of the matter, particularly from the viewpoint of the client agency. Accordingly, where the case has special significance to your agency, I would very much appreciate your asking your staff, when forwarding the case, to include a statement setting forth the fact of and the reason for its special significance. That will assist us to render the most efficient legal service possible.

- 2 -

Of course, when you are personally concerned about the progress of any given case, please do not hesitate to contact me directly, and I will make every effort to address the problems that give rise to your concerns.

Thank you very much for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Carla A. Hills', written in dark ink.

Carla A. Hills

OGC 74-0972

10 June 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Jury Duty for Covert Employees--U.S. District Court for
the District of Columbia

1. On 6 June I met with Chief Judge George L. Hart, Jr., in his chambers to discuss the problems that confront some Agency employees when they are called for jury duty. I stated that some of our employees have no visible employment relationship with the Agency, but they are in fact employees and are required to protect the covert employment relationship. I explained that previous Chief Judges (naming Sirica and Curran) had decided that such employees should not serve on their juries since they could not divulge their true employment. At this point, Chief Judge Hart interrupted me and informed me he would like to have Circuit Judge J. Skelly Wright attend our meeting since he and Judge Wright were studying the question of jury service in the District of Columbia.

2. Judge Wright joined us and I repeated the comments made to Judge Hart and then stated that although the Agency had an agreement with the former Chief Judges, I was there to seek their advice and guidance as to whether they wanted covert employees to serve. Judge Wright stated that it was his feeling that any individual who is required to keep his employer or the nature of his employment secret should not serve on a jury, but this was a matter within Judge Hart's discretion. Judge Hart stated that he felt such employees should be excused, but he wanted to make sure that the Circuit Court agreed with him. Judge Hart agreed that, rather than merely excusing an individual, he would have the Clerk of the Court pull the individual's registration card without explaining why it was being done.

3. I asked Judge Hart if I could explain our agreement to his secretary, Mrs. Dunnigan (who has been with the Judge for about 16 years), so that I would not have to bother him every time a covert employee was summoned. He agreed to this, commenting that he would still have to sign the summons. I asked him if he wanted a letter formalizing our agreement, and he said it was not necessary. Both he and Judge Wright were very cooperative and seemed to understand the problems involved.

4. On my way out I spoke with Mrs. Dunnigan and explained the problem to her. I told her that either I or another individual would deliver a covert employee's summons to her. In a case where there was not time to deliver the summons, I would call her and give her the individual's name and summons number. (This is the same arrangement I had worked out with Mrs. Holley, former Chief Judge Sirica's secretary.) Mrs. Dunnigan was very cooperative and agreed not to associate either my name or the Agency with a covert employee's name or summons.

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Office of General Counsel

OGC: AEG: cap

✓ Original - OGC Subj: JURY DUTY

1 - AEG Signer

1 - Chrono

OGC 74-0977
10 June 1974

MEMORANDUM FOR: Chief Support, EA Division

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SUBJECT: Travel Entitlements of Mr. [REDACTED]
Children

REFERENCE: OGC 73-2281, dtd 11 December 1973, Subj,
25X1A Response to Mr. [REDACTED] EA Support,
on [REDACTED] s Divorce

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1. You have requested the opinion of this Office on the entitlement of Mr. [REDACTED] to have his children travel to and from his post of assignment for the summer at Government expense. It is understood that [REDACTED] and his wife are in the process of being divorced and that a separation agreement entered into between them states that custody shall be shared jointly by the parties and that [REDACTED] is to have primary custody between 1 September and 1 June each year while Mr. [REDACTED] is to have primary custody from 1 June to 1 September. It is further understood that when the divorce is final the separation agreement will be incorporated within the divorce decree.

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2. When an Agency employee is transferred overseas his entitlement to travel for himself and his family at Government expense is established by statute and by regulations issued thereunder. [REDACTED]

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[REDACTED] With respect to who are "members of the family," Agency regulations at [REDACTED] state as follows: "When an employee is assigned to a post abroad, his dependents for purposes of travel (except educational travel) are (a) spouse; (b) children, (including step, adopted, and foster children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support," The Title 5 authority

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cited supra provides that regulations shall be prescribed by the President. That authority was delegated to the Director of the Bureau of the Budget by Executive Order 11230, 28 June 1965, then redelegated to the Administrator, General Services Administration by Executive Order 11609, 22 July 1971. The Administrator's regulations, "The Federal Travel Regulations," are found in 6 F.A.M. 190. Therein at 2.14d, "immediate family" is defined as ". . . (a)ny of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal travel or separation travel: spouse, children (including step-children or adopted children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age," (Emphasis added.) This definition of dependents for travel purposes is more restrictive than the Agency's because of the requirement that the children be members of the employee's household at the time he reports for duty at his new permanent duty station. In applying this more restrictive definition of dependents, the Comptroller General has ruled that an employee who, being divorced with his ex-wife having legal custody of their children, and who, after being overseas for more than a year gained legal custody and control of the children, was not entitled to the children's transportation at Government expense to join him at his post overseas. They were not within the definition of "immediate family" as they were not members of his household at the time he was assigned overseas. B-166113, 26 Feb 69.3, 26 Feb 69.

25X1A 3. This Office and the Comptroller General have ruled on questions similar to [] in the past and, for the most part, it has been held that where custody is in the mother the employee father has no entitlement to transportation of his children at Government expense. In a 1969 opinion, this Office held: "Notwithstanding the broad definition of dependents, and consistent with government travel law generally, we believe the purpose and meaning of the [] and FOIAB5 regulation are that the cost of travel of an employee's children to visit him and return to their place of residence with their mother when he is assigned abroad may not be paid in those instances in which the children are in the legal custody of their mother and reside with her." OGC 69-2073, 3 Nov 69.

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4. Comptroller General opinions on fact situations analogous to Mr. [] are as follows: It is believed that in conjunction with an examination of the questions of

custody, dependency and immediate family, the Government must also look at the purpose of the travel. In this regard the Comptroller General has ruled that a Navy enlisted man was not entitled to travel expenses for dependent wife who had taken two weeks' leave from her job in Pennsylvania to travel to and from San Diego, California, as she was not establishing her place of residence there. In fact, the Navy enlisted man was about to be released from active duty. In looking at the purpose of the travel, the Comptroller stated: "Your wife apparently preferred to live in McKees Rocks while you were on sea duty, and since she arranged for only a short period of leave from her employment at that place, it appears clear that the purpose of her trip to Long Beach was to visit you and probably to accompany you home, rather than for the purpose of establishing a residence at that place." "The law does not contemplate the furnishing of transportation at Government expenses under such circumstances," 33 Comp. Gen. 307 (1954). In another case dealing directly with the question of custody and travel, the Comptroller ruled that an employee of the Foreign Agricultural Service, Department of Agriculture, stationed in Buenos Aires, was not entitled to transportation at Government expense for his two children to visit him. The divorce decree in that case had obligated him to pay their mother \$150.00 per month for their maintenance and support as well as their schooling, medical bills and travel from their mother's home to his and return each year and, it "granted him custody of his children two months out of each year." The Comptroller viewed the two-month period of custody given to the father each year as a permissive right to visit the employee father with their actual residence being with the mother. He concluded the children could "not be considered as dependents for the purpose of charging the Government with the expenses of their travel." B-129962 (1957).

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5. In a subsequent case, the employee, like [] was stationed in []. The divorce had provided that the two children were in the joint custody of the employee and his former wife and he wanted to take them to [] to live with him following his home leave, it being understood that they would be members of his household in [] one residing with him for a period of approximately one year, the other, residing long enough to finish his last two years of high school. The Comptroller General stated: "If the two natural children of Mr [] do, in fact, return to [] with the employee to reside with him for the length of time indicated in the information transmitted here - approximately a year in the case of his daughter and longer in the case of his son - it is not

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unreasonable to regard such children as becoming members of the household of the employee at the time of their return with him and his second wife to [] from the United States, and the amount of their one-way transportation from the United States to [] properly may be certified for payment." 44 Comp. Gen. 443 (1965). Yet another case which was passed upon by the General Counsel, GAO, on 25 February 1974, and issued as an "Indorsement" to B-129962 cited supra, discussed the question of custody and residence. Therein "the legal care, custody and control of the two minor children" was in the mother but the father was to "have the actual physical custody and control of the two minor children for the entire summer vacation each year." The General Counsel found that the children's legal residence was with the mother and that residence was not altered by the father's temporary custody of them during the summer vacation each year. Accordingly, the children could not be considered "dependents for the purpose of charging the Government with their expenses of travel."

6. This Office believes it important to examine both the question of custody and the purpose of travel for which reimbursement is sought. We start from the basic premise that a Government employee has no right to reimbursement for travel except where the same is provided by statute and regulations issued thereunder. []

Title 5 of the U.S. Code, there are authorities which provide for reimbursement of the travel cost to an employee going abroad and for his dependents or "immediate family." The Comptroller General and this Office have ruled that where legal custody is not with the employee, there is no entitlement to travel or allowances. Also, we have ruled on custody in one parent and no expression of custody. Now we are faced with a situation of "joint custody" where the periods of custody between the father and mother during the year are specifically established with the mother having them for three-fourths of the year.

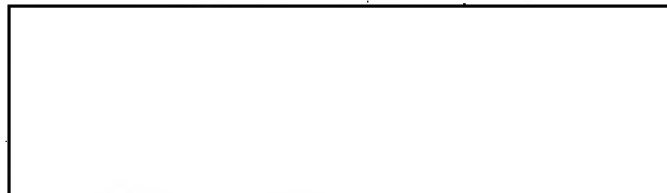
In looking at the intended travel of Mr. [] children to [] it seems clear that they do not intend to take up residence there and become members of his household for any appreciable period of time. Per the excerpt from the cable you attached to your request, Mr. [] states: "My tentative plan is to have them come out here approximately 15 July and remain through the first of September." The purpose of the trip is simply for visitation. On the questions of custody and dependency, it would seem that the facts of Mr. [] case are not unlike those found in the cited Comptroller General opinions. It is true that the regulations upon which those opinions are based are

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25X1A somewhat more restrictive than the Agency's regulations. Notwithstanding, it is the opinion of this Office that neither the law nor Agency regulations issued thereunder contemplate summer visitation travel at Government expense as sought by Mr. [] Were 25X1A Mr. []'s children to truly establish residence in [] and become members of his household for a substantial period of time as was the case in 44 Comp. Gen. 443, we are of the opinion that they might be found to be members of Mr. [] household and accordingly, entitled to travel at Government expense. 25X1A

7. If I can be of any further assistance, please advise.

25X1A



Assistant General Counsel

25X1A

cc: [] C/EA Support
y, DD/M&S

CONFIDENTIAL

Appeals of Escrow Leave Forfeiture

25X 1. Escrow leave was recognized formally by Agency regulations as early as 11 December 1954. [] supplement specified in paragraph 3a "When an employee is integrated into another Federal department, establishment, Agency or organization, annual and sick leave to his credit on the date of integration will remain to his credit in this Agency pending his return to the Agency from the organization into which he was integrated."

2. The Agency maintained an escrow leave account for each individual. One reason for this device was cover related — to prevent a new employee of the Department of State from appearing on its books with a considerable existing balance of leave.

3. In any event, the escrow leave account for each individual tended to remain sequestered and inviolate. The individual had difficulty in using this account for leave purposes. In practice, he had to take leave without pay from his cover organization in order to use his escrow leave. Since this practice could raise administrative questions within the cover organization, integrated employees, for the most part, did not touch their escrow accounts and tended to build up the cover organization leave account to the limit of the legal maximum. Demands of assignments, availability of home leave, and the generous annual leave accumulation combined to mean that most integrated employees really were not in a position to use all of the various types of leave that were accumulating.

4. During this period, the Agency did not have access to Department of State leave records. The individual benefited from two leave records managed by two separate organizations not in communication on this matter. In consequence, many individuals approached the legal leave limit in both Agency and cover organization leave accounts. This meant that they were substantially above the legal leave ceiling intended by Congress.

25X 5. Communications on leave accounts improved between the Agency and the Department of State. It became apparent within the Agency that the escrow system inadvertently was permitting the accumulation of annual leave in excess of the legal limit. [] 16 November 1965, addressed the problem thus:

"If, at the beginning of the leave year, the combination of the annual leave balance from the cover facility and the balance of the annual leave in the employee's Organization escrow leave account results in a total annual leave balance in excess of the maximum which the employee may legally carry over from leave year to leave year, the excess must be forfeited as of the beginning of the leave year."

"2. ...under no circumstances are escrow leave accounts intended as a means of allowing employees greater leave entitlements than are provided by law. (Underlining in original.)

3. Every internee concerned should recognize that in the year in which he terminates his internee status and returns to the Organization, his annual leave will be reconstructed and any excess will be forfeited as of the beginning of that leave year." (Underlining provided.)

7. During the same time period (15 November 1967) an attempt was made by the SSA/DDS to notify each individual concerned (primarily Clandestine Service and Support Directorate personnel) of their individual escrow leave balances. This attempt appears to have reached many, but not all, individuals. There are also indications that the full significance of this action was not appreciated by the recipients.

8. In 1970 arrangements were completed with the Department of State for the full transfer of all leave upon integration and the annual consolidation of leave balances by the Agency's Office of Finance. This arrangement was implemented by a revision to MHB and [] 25 February 1970. This Handbook stated,

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"(2) As of the beginning of each leave year, the internee's annual leave balance with the cover facility and his annual leave balance in Agency escrow will be added together to determine if the total exceeds the maximum allowable. If it does, the excess to be forfeited will be deducted from the balance of leave in escrow. The internee will be advised annually of the remaining balance in his escrow account."

9. This Handbook was implemented upon the close of the 1969 leave year, 10 January 1970. The Office of Finance prepared individual leave reconciliation notices for each affected employee. This task took several months. The first such notices were received in late summer and early autumn of 1970. The first complainant, [], Office of Communication, informally approached O/IG 19 October 1970. His action was followed by official complaints from Mr. [], Western Hemisphere Division/DDP, 5 August 1971, and Mr. [] of the same Division, 12 August 1971. Mr. [] had previously raised the issue with the Director of Personnel 16 March 1971. The Director of Personnel responded to Mr. [], rejecting his complaint on the grounds that no real rights had been damaged.

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10. The protests advanced are based upon the following general grounds:

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B. The leave was taken away without warning, denying the employee the opportunity to use such leave.

C. The effect of the action has been to reduce the employee's legal carry-over balance.

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D. The Agency has reneged on a moral obligation to the employee.

12. The escrow leave forfeiture did not have any effect upon legal leave ceilings which are based upon a total leave accumulation as of a certain date. In these calculations, some errors may have been made, but these were accidents.

13. Again, despite failures in the system, ample warning was given in 1965 and 1967. The intent was clear, but we accept the fact that not everyone got the word. Our past efforts, for example, have failed to establish that [redacted] received the 1967 notification.

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14. The abrupt and retroactive nature of the revision of HMB and [redacted] 25 February 1970, did not give individuals any opportunity to adjust leave balances in anticipation of the new policy. The late delivery of the actual individual notices further exacerbated the reactions of the complainants and heightened their feelings that a property had been unfairly taken from them.

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OGC 74-0992
12 June 1974

MEMORANDUM FOR: Executive Assistant to the Director of
Personnel

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SUBJECT: Escrow Annual Leave-

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2. The matter of escrow leave policy was the subject of an appeal in 1972 to the Inspector General and the DCI by three employees who suffered forfeiture of annual leave under circumstances similar to those in this case. These appeals were denied primarily on the basis of a detailed study of the problem dated 16 March 1972, a copy of which is attached at Tab A.

25X1A 3. Paragraph 13 of this study mentions that ample warning was given to employees in 1965 and 1967 with respect to a change in policy which was taking place in Headquarters regarding escrow leave accounts. These warnings consisted of publications of [redacted] on 18 November 1965 and [redacted] on 6 November 1967.

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25X1A 4. [redacted] addressed the problem as follows:

(2) Headquarters assembles all leave data, including the escrow account balances, if any, and reconstructs the employee's leave record as of the beginning of the leave year in which he returned from [redacted]

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OGC 74-1105
28 June 1974

MEMORANDUM FOR: Director of ELINT

ATTENTION:

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SUBJECT: Purchase of Transportation

1. You have requested the opinion of this Office whether the services of SAATAS Airways may be used by Agency personnel for securing official airline travel accommodations from Pan American when a general agent of Pan American is also located in the area in which the official travel is to originate.

2. provide that common carrier transportation may be procured as follows:

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(a) For cash directly from carriers.

(b) Through travel agencies, if consistent with cover, for travel within foreign countries (except Canada or Mexico); between foreign countries; or from foreign countries to the United States and its possessions, provided

(1) the request for transportation is made first to a company branch office or a general agent of an American flag air or ocean carrier if the travel originates in a city or its contiguous carrier-servicing area in which such branch office or general agent is located and through ticketing arrangements for the transportation authorized cannot be secured;

(2) there is no company branch office or general agent of an American flag air or ocean carrier located in the city or its contiguous carrier-servicing area in which the official travel originates;

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(3) no payment is to be made to a travel agency in addition to that which would have been properly chargeable had the service requested been obtained from the carrier or carriers involved.

3. Paragraph 15 of the Interline Traffic Agreement, which you forwarded for our review, clearly indicates that SAATAS is not a general agent for Pan American. This paragraph also provides that if there is a general agent of Pan American within the territory of the sale of the transportation, the reservation and sale will be handled through such general agent.

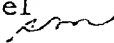
4. We understand that there is a general agent -- Ansett -- of Pan American within the territory involved in this case. Since SAATAS is not a general agent of Pan American and since there is a general agent of Pan American from whom our employees can purchase transportation, it is our opinion that prohibit the use of SAATAS as a travel agent.

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Assistant General Counsel

A handwritten signature in cursive script.

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